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Historical review of developments relating to aggression

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Addendum

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Annexes

Introductory note

The annexes contain a series of tables which reproduce, paraphrase or summarize the general principles and the specific factors contained in the constituent instruments and the jurisprudence of the tribunals that tried individuals for crimes against peace after the Second World War.

In some instances, the tribunals discussed the general principles relating to crimes against peace. More often, they considered or applied those principles in relation to the specific facts and circumstances of a particular case. To the extent possible, the tables present the relevant information in terms of general principles rather than specific conclusions in relation to the facts of a particular case. The tribunals also often did not clearly indicate the significance or the relevance of the specific factors discussed in relation to charges against a particular individual. To the extent possible, the tables place the specific factors in general categories to facilitate a comparison of the essential elements required for individual responsibility for crimes against peace. Given the close relationship between some of the factors, the same information may appear more than once.

Tables 1 to 4 concerning aggression by a State are contained in annex I. Tables 5 to 9 concerning individual responsibility for crimes against peace are contained in annex II. The tables may facilitate a more focused element-by-element consideration of the two aspects of aggression. A more complete discussion of these elements may be found in the main body of the paper at the paragraph or subparagraph indicated.

Annex I

Tables 1 to 4 concerning aggression by a State

Table 1
Aggression by a State: Categories of aggression and war

Note. The constituent instruments and the jurisprudence of the tribunals used various terms to refer to different categories of aggression and war, namely, aggression (aggressive) in general, acts of aggression (aggressive acts), acts of war, acts of aggressive war, and wars of aggression. The definitions of crimes against peace also referred to wars in violation of international treaties, agreements or assurances. However, the tribunals considered it unnecessary to determine the charges relating to such wars after finding sufficient evidence of the more serious charges of wars of aggression (paras. 54, 304 and 306). In addition, the definition of crimes against peace contained in Control Council Law No. 10 referred to invasions (see table 2). For the most part, these terms are not clearly defined or distinguished in the constituent instruments or the jurisprudence of the tribunals.

Source	*Aggression*	*Act of aggression*	*Act of war*	*Act of aggressive war*	*War of aggression*	*War in violation of treaties, etc.*
Nuremberg Charter					War of aggression (para. 2)	War in violation of international treaties, agreements or assurances (para. 2)
Nuremberg Judgement	Attack on the Soviet Union: plain aggression (para. 51)	Invasion of Austria: aggressive step in furthering plans to wage aggressive war (para. 31) Occupation of Austria: a step in the direction of further aggression, not charged as an aggressive war (paras. 96, 101) Annexation of Austria: aggressive act not charged as aggressive war (para. 105) Action against Czechoslovakia: aggressive in character (para. 33)		Invasion of Denmark and Norway: acts of aggressive war (para. 43) Invasion of Belgium, the Netherlands and Luxembourg: act of aggressive war (para. 45)	Kellogg-Briand Pact: war for the solution of international controversies undertaken as an instrument of national policy includes a war of aggression (para. 56) League of Nations: aggressive war or war of aggression (para. 57) Pan American resolution: war of aggression (para. 57) Occupation of Czechoslovakia: not charged as an aggressive war (para. 96) Poland: war of aggression (para. 24); aggressive war (para. 35) Yugoslavia and Greece: aggressive war (para. 48)	

Source	*Aggression*	*Act of aggression*	*Act of war*	*Act of aggressive war*	*War of aggression*	*War in violation of treaties, etc.*
Nuremberg Judgement (continued)					Soviet Union: aggressive war (para. 51, footnote 70) United States: aggressive war (para. 53)	
Control Council Law No. 10					Wars of aggression in violation of international laws and treaties (para. 122) War of aggression (para. 122)	War in violation of international treaties, agreements or assurances (para. 122)
***I.G. Farben* case**		Initiation of war constitutes an act of aggression against a neighbouring State (para. 135)				
***Krupp* case**						
***High Command* case**		An act of aggression is the changing of or the attempt to change international relationships by force of arms (para. 153)[a]			Aggressive war is criminal under international law (para. 153)	
***Ministries* case**	Invasion of Norway was aggressive (para. 186) Invasion of Luxembourg was aggressive, without legal justification or excuse (para. 188) Germany's Axis partner, Italy, initiated an aggressive attack against Greece (para. 189)	Aggressive acts violate international law (para. 173)	An act of war in the nature of an invasion (para. 181) A hostile and aggressive invasion is an act of war tantamount to a declaration of war (para. 181) Austria and Czechoslovakia: hostile and aggressive invasion was an act of war used as an instrument of national policy (para. 181)		Aggressive war violates international law (paras. 168, 169) The war initiated and waged against Norway was without lawful justification or excuse and was a crime under international law and Control Council Law No. 10 (para. 186)	

[a] States have the right to exercise all the privileges and powers of a sovereign State within the limitations of international law, free from all interference by force on the part of any other State (para. 153).

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Source	*Aggression*	*Act of aggression*	*Act of war*	*Act of aggressive war*	*War of aggression*	*War in violation of treaties, etc.*
***Ministries* case** (continued)	The action of Germany in Greece, including the invasion, was aggressive (para. 190) The invasion of Yugoslavia was aggressive (para. 192) The declaration of war against the United States was aggressive in character (para. 194) The invasions of and wars against Austria, Czechoslovakia, Poland, the United Kingdom and France, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Yugoslavia and Greece, the Soviet Union, and the United States were unlawful and aggressive, violated international law and were crimes within the definition of the London Charter and Control Council Law No. 10 (para. 195)					
***Roechling* case**						
Tokyo Charter					Declared or undeclared war of aggression[b] (para. 268)	War in violation of international law, treaties, agreements or assurances (para. 268)
Tokyo Judgement		Acts of aggression against France (para. 317)			War of aggression against China (para. 300)	

[b] The United Nations War Crimes Commission concluded that the irrelevance of a declaration of war was the main feature of the development of international law as formulated by the Nuremberg Charter and the Tokyo Charter. It concluded that this was provided for implicitly in the Nuremberg Charter and explicitly in the Tokyo Charter (para. 269).

Source	*Aggression*	*Act of aggression*	*Act of war*	*Act of aggressive war*	*War of aggression*	*War in violation of treaties, etc.*
Tokyo Judgement (continued)					War of aggression against the United States and the British Commonwealth (para. 302) War of aggression against the Soviet Union (para. 310) War of aggression against France (para. 318) Wars of aggression against the United Kingdom, the United States and the Netherlands (paras. 319, 320) War of aggression against the British Commonwealth (para. 322)	

Table 2
Aggression by a State: Forms of aggression

Note: The constituent instruments of the tribunals referred to wars of aggression without indicating what type of conduct by a State constituted a war of aggression. The tribunals considered the nature and characteristics of a war of aggression in determining the charges of crimes against peace in relation to the specific facts and circumstances of the cases that were before them. Thus, the judgements of the tribunals provide further guidance as to the type of conduct by a State which may constitute a war of aggression depending on the stage of the military operations, including the threat of force, an armed attack, invasion, occupation, annexation or incorporation, and war.

Source	*Threat of force*	*Armed attack*	*Invasion*	*Occupation*	*Annexation or incorporation*	*War*
Nuremberg Charter						War of aggression (para. 2) War in violation of international treaties, agreements or assurances (para. 2)
Nuremberg Judgement		Attack on the Soviet Union: plain aggression (para. 51)	Invasion of Austria: aggressive step in furthering plans to wage aggressive war (para. 31) Action against Czechoslovakia: aggressive in character (para. 33) Invasion of Denmark and Norway: acts of aggressive war (para. 43) Invasion of Belgium, the Netherlands and Luxembourg: act of aggressive war (para. 45)	Occupation of Austria: a step in the direction of further aggression (not charged as an aggressive war) (paras. 96, 101) Occupation of Czechoslovakia: not charged as an aggressive war (para. 96)	Annexation of Austria: aggressive act (not charged as aggressive war) (para. 105)	Kellogg-Briand Pact: war for the solution of international controversies undertaken as an instrument of national policy includes a war of aggression (para. 56) League of Nations: aggressive war or war of aggression (para. 57) Pan American resolution: war of aggression (para. 57) Poland: war of aggression (para. 24); aggressive war (para. 35) Yugoslavia and Greece: aggressive war (para. 48) Soviet Union: aggressive war (para. 51, footnote 70) United States: aggressive war (para. 53)

Source	*Threat of force*	*Armed attack*	*Invasion*	*Occupation*	*Annexation or incorporation*	*War*
Control Council Law No. 10			Invasion of other countries (para. 122)			Wars of aggression in violation of international laws and treaties (para. 122) War of aggression (para. 122) War in violation of international treaties, agreements or assurances (para. 122)
***I.G. Farben* case**						Initiation of war constitutes an act of aggression (para. 135)
***Krupp* case**						
***High Command* case**			An invasion of one State by another is the implementation of the national policy of the invading State by force even though the invaded State, due to fear or the futility of resisting superior force, adopts a policy of non-resistance and thus prevents the occurrence of any actual combat (para. 151)			War is the implementation of a political policy by means of violence (para. 150) War activity is the implementation of a predetermined national policy (para. 150) War is the exerting of violence by one State or politically organized body against another (para. 150) An aggressive war is the result of an act of aggression (para. 153) Aggressive war is criminal under international law (para. 153)

Source	*Threat of force*	*Armed attack*	*Invasion*	*Occupation*	*Annexation or incorporation*	*War*
***Ministries* case (Five defendants convicted (two acquitted on review) and nine defendants acquitted of crimes against peace)**		The attack on Belgium was without justification or excuse and was a crime against peace (para. 187) Germany's Axis partner, Italy, initiated an aggressive attack against Greece (para. 189)	Invasion violates international law (para. 168) Aggressive invasion (para. 169) Invasion connotes and implies the use of force (para. 177) An invasion is an act of invading, especially a warlike or hostile entrance into the possessions or domains of another; the incursion of an army for conquest or plunder (*Webster's Dictionary*, see para. 177) An act of war in the nature of an invasion (para. 181) A hostile and aggressive invasion is an act of war tantamount to a declaration of war (para. 181) Austria and Czechoslovakia: hostile and aggressive invasion was an act of war used as an instrument of national policy (para. 181)			Kellogg-Briand Pact: war as an instrumentality or instrument of national or governmental policy or as a means of enforcing lawful claims and demands is unlawful (paras. 168, 169, 176) Aggressive war violates international law (paras. 168, 169) The war that was initiated and waged in Norway was without lawful justification or excuse and was a crime under international law and Control Council Law No. 10 (para. 186) The declaration of war against the United States was aggressive in character (para. 194) The invasions of and wars against Austria, Czechoslovakia, Poland, the United Kingdom and France, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Yugoslavia and Greece, the Soviet Union, and the United States were unlawful and aggressive, violated international law and were crimes within the definition of the London Charter and Control Council Law No. 10 (para. 195)

Source	*Threat of force*	*Armed attack*	*Invasion*	*Occupation*	*Annexation or incorporation*	*War*
***Ministries* case** (continued)			An act of war, in the nature of an invasion, whereby conquest and plunder are achieved without resistance, is not to be given more favourable consideration than a similar invasion which meets with some military resistance (para. 181) Aggressor State's ability to overawe the invaded State does not detract from the enormity of the aggression perpetrated (para. 181) The invasion of Austria was aggressive and a crime against peace (para. 182) The invasion of Norway was aggressive (para. 186) The invasion of Luxembourg was aggressive, without legal justification or excuse (para. 188) Germany's action in Greece (including invasion) was aggressive (para. 190)			

Source	*Threat of force*	*Armed attack*	*Invasion*	*Occupation*	*Annexation or incorporation*	*War*
Ministries case (continued)			The invasion of Yugoslavia was aggressive (para. 192) The invasions of and wars against Austria, Czechoslovakia, Poland, the United Kingdom and France, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Yugoslavia and Greece, the Soviet Union, and the United States were unlawful and aggressive, violated international law and were crimes within the definition of the London Charter and Control Council Law No. 10 (para. 195)			
Roechling case						
Tokyo Charter						Declared or undeclared war of aggression (para. 268)[a] War in violation of international law, treaties, agreements or assurances (para. 268)
Tokyo Judgement	France: Japan demanded that France cede the right to station troops and the right to airbases and naval bases in French Indo-China under threat of force; France was compelled to grant the demands (para. 318)	China: attack (para. 307) Attacks on the United Kingdom, the United States and the Netherlands (para. 317)	China: invasion, successive advances followed by periods of consolidation in preparation for further advances (para. 307)	China: overrunning and occupying the State, setting up a puppet government, exploiting its economy and natural resources to feed Japan's military and civilian needs (paras. 300, 307)		War of aggression against China on a vast scale (para. 300)

[a] The United Nations War Crimes Commission concluded that the irrelevance of a declaration of war was the main feature of the development of international law as formulated by the Nuremberg Charter and the Tokyo Charter. It concluded that this was provided for implicitly in the Nuremberg Charter and explicitly in the Tokyo Charter (para. 269).

Source	*Threat of force*	*Armed attack*	*Invasion*	*Occupation*	*Annexation or incorporation*	*War*
Tokyo Judgement (continued)	France: Japan demanded that French troops and police in French Indo-China be placed under Japanese command and that all means of communications and transport necessary for military action be placed under Japanese control — ultimatum backed by the threat of military action — France refused and Japan enforced the demands with military action; fighting resulted (para. 318)	Unprovoked attacks against the United Kingdom, the United States and the Netherlands prompted by the desire to seize their possessions; attacks made with this motive cannot but be characterized as wars of aggression (para. 319)		France: occupation of French Indo-China (para. 318)		

Table 3

Aggression by a State: Factors in determining the aggressive character of conduct by a State

Note. The constituent instruments of the tribunals did not define aggression or indicate the factors to be considered in determining the aggressive character of conduct by a State. The tribunals considered a number of factors in determining whether the threat or use of force by a State was aggressive or defensive in character, including: the repressive and violent methods used by the aggressors to gain control of the State to pursue their aggressive aims; the aggressive intentions of the leaders; the formulation and adoption of a policy of aggression; the nature and extent of planning to carry out the aggression; the nature and extent of preparation to carry out the aggression; and the action taken to carry out the aggressive intent.

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct (action taken to carry out the intent, implement the policy and execute the plan)*
Nuremberg Charter						
Nuremberg Judgement	Suspending guarantees of freedom (para. 18) Persecuting, arresting and murdering political opponents (para. 18) Prohibiting opposition political parties (para. 18) Controlling the legislature, the judiciary and the civil service (para. 18) Reducing the power of local and regional governments (para. 18) Abolishing independent trade unions and youth organizations (para. 18) Limiting the influence of churches (para. 18) Controlling education and the media (para. 18)	Unification of members of a group located in different countries in a single country (paras. 19, 20) Abrogation of peace treaties (paras. 19-20) Territorial expansion (paras. 19-20, 25) Exploitation of foreign resources (paras. 19-20) Colonization of surplus population (paras. 19-20) Formation of a national army (paras. 19, 20)	Kellogg-Briand Pact: war as an instrument of national policy (para. 56) The threat of war and war itself as an instrument of national policy (para. 61) Aggressive designs as a deliberate and essential part of foreign policy (para. 24) Belief in the necessity of force as a means of solving international problems (para. 25) Extolling force as an instrument of foreign policy (para. 25) Aggressive policies long considered and prepared (para. 45)	Premeditated and careful planning (paras. 24, 26) Preordained scheme and plan (para. 24) Design carefully thought out (para. 50) Plan is part of a carefully prepared scheme (para. 51)	Rearmament for aggressive purposes (paras. 20, 22, 23) Reorganizing the economy for military purposes (particularly the armament industry) (para. 22) Withdrawing from international organizations devoted to disarmament and peaceful settlement of disputes (Disarmament Conference and League of Nations) (para. 22) Abrogating a peace treaty, including its disarmament clauses (para. 22) Instituting compulsory military service and increasing the armed forces (para. 22) False assurances of peaceful intentions (para. 22)	Threat or use of force if necessary (para. 21)

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
Nuremberg Judgement (continued)					Re-entry into demilitarized zone (para. 22)	
Seizure of Austria		Unification of members of a group located in another State in a single State (paras. 19, 20) Conquering another State to improve the military-political position of the aggressor State (paras. 29, 31)		Premeditated and careful planning (paras. 24, 31) Preordained scheme and plan (para. 24)	Intervention in internal affairs (para. 28 (a), (b), (e), (j)) False assurances of non-intervention and peaceful intentions (para. 28 (c)) Entering into a treaty recognizing a State's sovereignty and agreeing to non-intervention with no intention of complying (para. 28 (c) and (d)) Creation of "incidents" to justify intervention (para. 28 (e)) Concessions obtained by the threat of armed force or invasion (para. 28 (f)-(i)) Attempting to justify aggressive action (para. 28 (k))	Invasion (para. 28 (j), (l)) Annexation (para. 28 (m), (n), para. 29)
Seizure of Czechoslovakia		Unification of members of a group located in another State in a single State (paras. 19, 20) Conquering another State to improve the military-political position of the aggressor State (paras. 29, 33)		Premeditated and careful planning (paras. 24 and 32 (a), (d), (e) and (f)) Preordained scheme and plan (para. 24) Elaborate and detailed planning (para. 32 (e) and (g)) Detailed planning couched in warlike	Intervention in internal affairs (para. 32 (e)) False assurances of peaceful intentions and no territorial ambitions (para. 28 (c), 32 (b), (c), (h)) Signing an international agreement with no intention of complying (para. 32 (h))	Invasion (para. 32 (j)) Occupation (para. 32 (j)) Annexation (para. 29) Incorporation (para. 32 (i) and (k))

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
Seizure of Czechoslovakia (continued)				language indicating a calculated design to resort to force (para. 32, footnote 47)	Creation of "incidents" to justify intervention (para. 32 (f)) Concessions obtained by the threat of armed force or invasion (para. 32 (i)) Orders to prepare for military action (para. 32 (d))	
Invasion of Poland		Using the armed forces to attack another State (para. 33) Destroying the military strength of another State and satisfying the defence requirements of the aggressor State (para. 34 (h)) Attacking another State to enlarge the living space and secure food supplies for the aggressor State (para. 34 (j)) Invading another State at all costs despite international appeals (para. 35) Incorporating part of another State (para. 34 (h))		Premeditated and careful planning (para. 24) Preordained scheme and plan (paras. 24 and 34 (j), (l) and (o))	Entering into a treaty for the peaceful settlement of disputes or issuing a declaration on non-aggression with no intention of complying (paras. 33 and 34 (a) and (b)) False assurances of peaceful intentions and no territorial ambitions (para. 34 (c), (d), (f), (i)) Orders for the armed forces to prepare for invasion, occupation and war (para. 34 (e), (g), (k)) Ignoring international appeals to avoid war (para. 34 (m)) Bad-faith participation in negotiations to settle dispute peacefully (para. 34 (n))	Invasion (para. 34 (q))
Invasion of Denmark and Norway		Invading another State to acquire bases to improve the strategic and operational position of the aggressor State (para. 36 (c))		Advance planning (para. 36 (c))	Intervention in internal affairs (para. 36 (e)) False assurances to respect a State's inviolability, integrity	Invasion (para. 36 (h))

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
Invasion of Denmark and Norway (continued)		Occupying another State to prevent encroachment by a third State, to secure natural resources and to acquire a strategic position for attacks against a third State (para. 36 (f), para. 40) Continued occupation of another State with the aim of making it a possession of the aggressor State (para. 42)			and territory and of the absence of any conflict or controversy (para. 36 (b) and (d)) Documents, meetings and orders concerning preparations for invasion and occupation (para. 36 (c) and (f)) Military operational orders for the invasion (para. 36 (g))	
Invasion of Belgium, the Netherlands and Luxembourg		Seizing and occupying a neutral State to obtain bases for attacking a third State (para. 44 (a) and (b)) Occupying a State to be able to mine the coast of a third State (para. 44 (f))		Advance planning (para. 44 (a), (b), (f))	False assurances to respect neutrality (para. 44 (c)) Orders to the armed forces to prepare for an immediate invasion and to schedule the attack (para. 44 (d), (e)) Attempt to justify aggressive action (para. 45)	Invasion (para. 44 (g))
Invasion of Yugoslavia and Greece		Invading and occupying another State (para. 46 (d), (e), (i)) Destroying another State militarily and as a national unit (para. 46 (k))		Advance planning (para. 46 (d), (e), (g), para. 48)	False assurance of final, inviolable frontier (para. 46 (a)) Attempting to persuade a third State to attack another State (para. 46 (b)) Orders to the armed forces to prepare to occupy another State (para. 46 (d) and (k)) Massing troops along the border of the State to be attacked (para. 46 (f))	Invasion of a State, without warning, and bombing it (para. 46 (l))

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
Invasion of Yugoslavia and Greece (continued)					Attempting to justify aggressive action (para. 47)	
Invasion of the Soviet Union		Attacking another State, destroying it as an independent State, partitioning it and creating colonies (para. 49 (f) and (g)) Destroying a State as a political and military power to enable the aggressor State to pursue its aim of territorial expansion (para. 50) Feeding the army of the aggressor State with the resources of the occupied State (para. 50) Economic exploitation, removal of masses of population, murder of political leaders (para. 49 (d) and (e), para. 51)		Advance planning (para. 49 (f), (g), para. 50)	Entering into a non-aggression pact with no intention of complying (para. 49 (a)) Preparations for an attack and the exploitation of the occupied State (para. 49 (c)-(e), (h)) Drawing a third State into the war (para. 49 (i))	Invasion without a declaration of war (para. 49 (j)) Attacking without warning or legal excuse (para. 51)
Declaration of war against the United States by Germany		Ally attacking another State (para. 52 (b))			Encouraging a third State to attack another State (paras. 52 (b), 53) Promising to support a third State and join the war if it attacks another State (para. 52 (a)-(c))	Declaring war against a State attacked by a third aggressor State (paras. 52 (h), 53)
Control Council Law No. 10						
***I.G. Farben* case**						
***Krupp* case**						
***High Command* case**		The aggressive character of a criminal war or the defensive character of a	The policy under which a war is initiated is criminal in its intent and purpose if the			An aggressive war is the result of an act of aggression (para. 153)

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
***High Command* case** (continued)		legitimate war depends on the factors that entered into its initiation, namely, the intent and purpose for which it was planned, prepared, initiated and waged (paras. 150, 152) Armed forces are lawful instrumentalities of a State, which have internationally legitimate functions; there is no general criterion under international common law for determining the extent to which a State may arm and prepare for war; as long as there is no aggressive intent, there is no evil inherent in a State making itself militarily strong (para. 154)	individuals at the policy-making level had a criminal intent and purpose in determining the policy (para. 155)			
***Ministries* case**						
Invasion of Austria		Annexation of another State (para.178 (b))	Invasion is part of a programme declared by the head of State to his circle of advisers (para. 179)	Planning to seize another State without regard to the wishes of its people (para. 178 (a)) Invasion is the first step in a well-conceived and carefully planned campaign of aggression (para. 179)	Aggressive invasion following a campaign of deceit, threats and coercion; emphasis is upon duplicity and overwhelming force (para. 179) Intervention in internal affairs (para. 178 (b), (d), (e)) Entering into agreements with no intention of complying (para. 178 (c))	Threat or use of force (para. 178 (d), (e))
Invasion of Czechoslovakia		Annexation of another State (para. 178 (h))		Planning to seize another State without regard to the wishes of its people (para. 178 (a))	Intervention in internal affairs (para. 178 (f), (g), (j), (k))	Threat or use of force (para. 178 (l))

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
Invasion of Czechoslovakia (continued)				Planning to destroy another State remains constant, but where, when and how to strike depends upon the circumstances that arise; need to distinguish between strategy as the overall plan which does not vary and tactics as the techniques of action which adjust themselves to the circumstances of weather, terrain, supply and resistance (para. 180) Invasion is the second step in a well-conceived and carefully planned campaign of aggression (para. 179)	False assurances of no aggressive plans and friendly relations (para. 178 (c), (i)-(k)) Creating an incident as an excuse for military action (para. 178 (k))	
Invasion of Poland				Invasion is the third step in a well-conceived and carefully planned campaign of aggression (para. 179)	Intervention in internal affairs (para. 178 (k)) False assurances of friendly relations and peace (para. 183) Creating an incident as an excuse for military action (para. 178 (k))	Invasion (para. 183)
Invasion of Denmark and Norway		Invasion and occupation of a State to obtain bases (paras. 184, 186)			Entering into non-aggression pacts with and giving assurances to a State when its occupation is being considered (para. 184) Intervention in the internal affairs of another State (para. 186)	Invasion (paras. 184-185)

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
Invasion of Denmark and Norway (continued)					Failure to inquire whether a State could or would protect its neutrality against third States and fear that such an inquiry might encourage international efforts to maintain its neutrality and prevent it from becoming a theatre of war (para. 186)	
Invasion of Belgium, the Netherlands and Luxembourg		The intention to invade another State was predetermined and only awaited a favourable moment (para. 187, footnote 84)			Preparations to invade another State were matured long before (para. 187) False assurances of respect for treaty obligations and no hostile intentions given after intention to invade has been determined (para. 187)	Attack and invasion (paras. 187-188)
Invasion of Greece and Yugoslavia		Head of State's decision to invade another State (para. 192)				Invasion (paras. 190, 192)
***Roechling* Case**						
Tokyo Charter						
Tokyo Judgement	Unconstitutional and ruthless methods, including military action abroad without Cabinet approval, assassination of opposing leaders, plots to overthrow by force of arms Cabinets which refused to cooperate with the aggressors and a military revolt which seized the capital and attempted to overthrow the Government (para. 299)	To extend the territory of a State by threat or, if necessary, by military force (para. 298) To secure Japan's domination by preparing and waging wars of aggression (para. 303)	Policy of expansion by the use of force (para. 298)	Far-reaching plans for waging wars of aggression (para. 303)	Prolonged and intricate preparation for wars of aggression (para. 303)	

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
War against China		Territorial expansion, colonization, exploitation of resources (para. 308)			Armed incidents used as pretexts for military action, false assurances and false claims of self-defence, violating international agreements and disregarding international efforts to reach a negotiated settlement, interference in internal affairs, illicit drug trafficking to weaken resistance and finance operations (para. 308)	China: infiltrating North China, garrisoning the land, invasion, overrunning and occupying the State, setting up puppet governments, exploiting its economy and natural resources to feed Japan's military and civilian needs (paras. 300, 307, 308)
War against the Soviet Union		To attack the Soviet Union to seize and occupy its Eastern territories (paras. 302, 309, 310)	Intention to undertake a war against the Soviet Union was a basic element of military policy; war of aggression against the Soviet Union was a principal element of Japan's national policy (paras. 309, 310)	Long planning for a war of aggression, detailed plans for control of the occupied territories, elaborate plans for acts of subversion and sabotage (paras. 302, 310, 311)	Long preparation for a war of aggression, active preparations for war (paras. 302, 311) Seizure of Manchuria as a point of approach in the intended war against the Soviet Union, large concentration of troops deployed in Manchuria along the Soviet border (paras. 309, 311) Extensive preparations for war were clearly offensive (para. 310) Concluding a secret agreement creating a military and political alliance against the Soviet Union, aiding Germany after it invaded the Soviet Union contrary to the Japan-USSR Neutrality Pact and entering into the Neutrality Pact without candour as a	Initiating hostilities, attack, use of force (para. 313)

Source	*Method used to gain control of the State to pursue aggressive aims*	*Intent*	*Policy*	*Planning*	*Preparation*	*Conduct* *(action taken to carry out the intent, implement the policy and execute the plan)*
War against the Soviet Union (continued)					device to advance the aggressive intentions (para. 310)	
The Pacific War					Forcing troops into French Indo-China under threat of military action to secure a jumping-off place for attacks on the Philippines, Malaya and the Netherlands East Indies (para. 302)	Acts of aggression and attacks (para. 317)
War against France				Planned for war (paras. 302, 318)	Prepared for war (para. 302)	Ultimatums backed by threat of force, demands enforced by military action, fighting resulted (para. 318)
Wars against the United Kingdom, the United States and the Netherlands				Planned for war (para. 302) Long-planned invasion of the Netherlands Far Eastern territories (para. 302)	Prepared for war (para. 302)	Issuing orders declaring a state of war with the Netherlands (para. 302)
Alleged war against Thailand						No war of aggression against Thailand because of complicity between its leaders and Japan and lack of evidence that Japan's advance into Thailand was contrary to its wishes (para. 321)
War against the British Commonwealth of Nations		To destroy or occupy strategic areas of Australia and mine its coasts (para. 322)				
War against the Philippines (United States)						War of aggression was waged against the people of the Philippines, but considered part of the war against the United States (para. 323)

Table 4
Aggression by a State: Defence claims

Note. The constituent instruments of the tribunals did not address the question of possible defences to allegations that a State had committed aggression. The tribunals dealt with a number of such defences that were raised in the cases before them. For the most part, the tribunals dealt with the defences in relation to the general consideration of whether the conduct by the State constituted aggression as a prerequisite to the specific consideration of the charges of individual responsibility for crimes against peace. In some instances, the individual defendants raised or reiterated defences relating to the conduct by the State in presenting their defence to the charges against them for crimes against peace.

The Tokyo Tribunal, in response to defence claims, also addressed the factual question of whether certain conduct rose to the level of aggressive war or constituted a mere border incident. Its consideration of this question indicates some of the relevant factors to consider in making this determination. The Tribunal ultimately rejected those claims based on the particular facts of the case.

Self-defence appears to be the only defence that was accepted in principle (although not in fact in the cases considered) as a valid defence to justify the threat or use of force by a State that would otherwise constitute aggression. The tribunals tended to divide this type of conduct by a State into only two categories, namely, unlawful aggression or lawful self-defence.

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
Nuremberg Charter				
Nuremberg Judgement	Defence claim — invasion of Norway: (a) preventive attack to forestall an invasion by a third State; (b) State's judgement regarding need for preventive action is conclusive (paras. 37-38, 74 (h), 76 (e)) Rejected: (a) no imminent invasion; (b) attack planned in advance to acquire bases for attacks on a third State; (c) defensive or aggressive character of action must be subject to investigation and adjudication to enforce international law (paras. 38-39) Defence claim — invasion of Belgium, the Netherlands and Luxembourg: to prevent invasion and occupation by a third State (para. 45)			Defence claim — seizure of Austria: (1) support for the union, (2) common interests of the two peoples, and (3) achievement of the objective without bloodshed (para. 30) Rejected: (1) aggressive motive: military advantage to be gained by annexation; and (2) aggressive methods used to achieve the objective: ultimate factor threat of armed force (para. 30)

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
Nuremberg Judgement (continued)	Rejected: (a) no evidence of planned invasion and occupation by a third State; (b) aggressor State invaded another State to advance its aggressive policies long considered and prepared (para. 45) Defence claim — invasion of Greece: attack in response to a third State's attempt to expand the war (paras. 47, 74 (g)) Rejected: (a) attack planned before the third State was present; (b) third State present to help defend against prior aggression (paras. 47, 48) Defence claim — invasion of the Soviet Union: the other State was planning and preparing an attack (para. 50) Rejected: (a) no evidence that the other State was planning and preparing an attack; (b) attacked pursuant to a carefully planned scheme; (c) aggressive intent: economic exploitation, etc. (paras 51, 74 (i), 76 (h))			
Control Council Law No. 10				
***I. G. Farben* case**				
***Krupp* case**				
***High Command* case**	An unlawful war of aggression connotes of necessity a lawful war of defence against aggression (para. 154)			
***Ministries* case**	The right of self-defence was preserved because if resistance was not immediately offered, a State would be overrun and conquered before it could obtain the judgement of an international authority that it was justified in resisting attack (para. 168)	Defence claim — invasion of Denmark: military necessity (para. 184) Rejected: military necessity is never available to an aggressor State as a defence for invading the rights of a neutral State (para. 184)		Defence claim: Nuremberg Charter and Control Council Law No. 10 invalid based on the *Tu quoque* doctrine (para. 170) Rejected: the Nuremberg Charter and Control Council Law No. 10 declared existing international law regarding aggressive wars and invasions, they were not legislative acts, a law duly passed does not

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
Ministries case (continued)	Defence claim — invasion of Norway was justified: third States planned to land expeditionary forces in violation of Norway's neutrality (para. 185) Rejected: a State which initiates an aggressive war forfeits the right to claim self-defence; the invasion was motivated by the desire to obtain bases; the invasion was aggressive; the war that was initiated and waged was without lawful justification or excuse and was a crime under international law and Control Council Law No. 10 (paras. 185-186) Defence claim: the State was compelled to use force to rid itself of the bonds imposed upon it by the Treaty of Versailles (paras. 172-173) Rejected: a State which initiates aggressive war loses the right to claim self-defence: there is no self-defence against self-defence (para. 176) Defence claim: the invasion of Belgium was justified because of conversations between the Belgian and French military staffs (para. 187) Rejected: long-matured preparations to invade Belgium were not a secret; conversations with third States were limited to defence and possible aid if invaded; the attack was without justification or excuse and constituted a crime against peace (para. 187) Invasion of the Netherlands: even less ground for justification and excuse than the invasion of Belgium (para. 187)	Defence claim: Germany invaded Yugoslavia because of fear that it would not remain neutral and would join Germany's enemies (para. 191) Rejected: the doctrine of military necessity is not available to an aggressor State (para. 191)		become ineffective because of the guilty conduct of one legislator who voted for its enactment (para. 170) Defence claim: Versailles Treaty invalid because its unjust or unduly harsh terms were imposed by force of arms (paras. 172-173) Rejected: even if the Versailles Treaty were invalid, the aggressive wars and invasions violated other agreements that were freely entered into (paras. 173-175) Invasion of Luxembourg: no justification or excuse was offered other than military convenience; no claim that Luxembourg violated its neutrality which it had not; the invasion was aggressive, without legal justification or excuse (para. 188) Defence claim: Italy initiated the invasion of Greece without previous consultation or agreement with Hitler (para. 189) Rejected: Germany was advised of the imminence of the attack by its Axis partner, Italy; Germany knew of Greece's apprehensions regarding the same; and Germany intentionally displayed ignorance and refused to take any action to prevent it (para. 189)

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
Ministries case (continued)	Defence claim: Germany was compelled to intervene in Greece because the United Kingdom had landed troops there (para. 189) Rejected: an aggressor State cannot plead self-defence; a State has no right to aid an aggressor State; a State which initiates aggressive war cannot claim self-defence against those who take up arms against the aggressor; the first aggression stigmatizes every other act in waging war against or extending it to other States; Germany's action in Greece was aggressive, violated its treaty obligations, was without justification and violated international law (paras. 189-190) Defence claim: Germany invaded Yugoslavia because of fear that it would not remain neutral and would join Germany's enemies (para. 191) Rejected: the doctrine of self-defence is not available to an aggressor State (para. 191) Defence claim: invasion of Russia due to fear of attack (paras. 193, 249) Rejected: the invasion was induced by Russia's material resources (para. 193, 249) Defence claim: the United States had abandoned a neutral attitude and supported the States that sought to defeat Germany (para. 194) Rejected: a State which engages in aggressive war invites other States to take measures, including force, to halt the invasion and punish the aggressor; if the aggressor State consequently declares war on a			

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
Ministries case (continued)	third State, the original aggression carries over and characterizes the second and succeeding wars as aggressive (para. 194)			
Roechling case				
Tokyo Charter				
Tokyo Judgement	Defence claim: the object of Japan's actions against the Soviet Union was defence against communism (para. 310) Rejected: object of attack was to seize part of its territories; aggressive plans and military policy could not be characterized as "strategic defensive" (paras. 310, 311)		Defence claim — war against the Soviet Union: attack at Lake Khassan was a border incident caused by uncertain boundaries and resulting in clashes of opposing frontier guard detachments (para. 313) Rejected: Japan initiated the hostilities, the attack was deliberately planned and undertaken with substantial forces, the purpose may have been to determine the Soviet strength in the area or to seize the strategically important territory, the force employed was not very large, but the purpose and the result if the attack had been successful were sufficient to justify describing the hostilities as a war, the operations of the Japanese troops were clearly aggressive (para. 313) Defence claim — war against the Soviet Union: the hostilities in the Nomonhan district were a mere clash between opposing border guards (para. 314) Rejected: the fact that the Japanese troops were defeated does not determine the character of the operations, the operations were on a large scale extending over a period of four months, they were undertaken after careful preparation, the intention was to exterminate the enemy troops, the operations amounted to aggressive war (para. 314)	Defence claim: actions against the Soviet Union were condoned in subsequent agreements (para. 315) Rejected: none of the agreements granted immunity or dealt with criminal or other liability, it would be against public interest to countenance condoning a crime expressly or implicitly (para. 315)

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
War against the Soviet Union				
The Pacific War	Defence claim: Japan's actions in the Pacific were justifiable measures of self-defence taken to preserve the welfare and prosperity of its nationals in response to economic measures taken by the Western Powers (paras. 317, 365, 372, 375) Rejected: the economic measures were a justifiable attempt to induce Japan to depart from a course of aggression, to stop supplying Japan with materials to wage war upon them and to build up the supplies needed to resist the aggressors; Japan's decision to expand at the expense of its neighbours was taken long before the economic measures; Japan's actions were prompted by the desire to deprive China of aid against Japan's aggression and to secure its neighbours' possessions in the South (para. 317) Defence claim: Japan could not wage aggressive war against the Netherlands because it had declared war on Japan first (para. 320) Rejected: Japan had planned and prepared to invade and seize the Netherlands East Indies; the Netherlands declared war in self-defence because of the imminence of the attack and thus officially recognized the state of war begun by Japan (paras. 302, 320)			
War against France				
Wars against the United Kingdom, the United States and the Netherlands				
Alleged war against Thailand				

Source	*Self-defence*	*Military necessity*	*Mere border incident*	*Other*
War against the British Commonwealth of Nations				
War against the Philippines (United States)				

Annex II

Tables 5 to 9 concerning individual criminal responsibility

Table 5
Individual criminal responsibility: High-level position

Note. Control Council Law No. 10 was the only constituent instrument that addressed the question of a high-level position as a prerequisite for individual responsibility for crimes against peace. It provided that a person would be deemed to have committed a crime against peace if the person held a high political, civil or military (including General Staff), financial, industrial or economic position in Germany, one of its allies, co-belligerents or satellites (para. 123). Even though the constituent instruments of the other tribunals did not contain such a provision, it was generally recognized that only persons holding a high-level position would be able to commit crimes against peace.

The jurisprudence of the tribunals indicates that the relevant criterion is not a person's title, rank or position but rather the ability to exercise the attributes of power that accompany a high-level position, namely, leadership, policy-making, decision-making, influencing high-level officials, as well as responsibility, authority and discretion. The tribunals considered not only whether a person held such a position but also whether the person exercised the attributes of power to further or to impede the aggressive aims (see tables 8 and 9). They also recognized that planning and waging wars of aggression required the participation of persons in high-level positions in various sectors of society.

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Nuremberg Charter						
Nuremberg Judgement						A leader cannot make aggressive war alone. It requires the cooperation of statesmen, military leaders, diplomats and businessmen. (para. 62)
Göring **(convicted of counts one and two)**	Leader of the political party with aggressive aims (para. 64 (b)) The moving force for aggressive war (para. 66)			Adviser and active agent of the head of State (paras. 64 (a), 65)		Political party (Political Deputy) (para. 64 (b)) Government (Plenipotentiary for the Four Year Plan) (paras. 64 (c), (e), 65) Military (Commander-in-Chief of the Air Force) (paras. 64 (c), 65)
Hess **(convicted of counts one and two)**	Leader of the political party with aggressive aims (para. 67 (c))		Decision-making authority on questions of party leadership (para. 67 (c))	Closest personal confidant of the head of State (paras. 67 (a), 68)	Responsibility for handling all party matters (para. 67 (c)) Authority to approve all legislation before enactment (para. 67 (d))	Political party (Deputy Führer) (para. 67 (b) and (c)) Government (Minister without Portfolio) (para. 67 (b) and (d))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
von Ribbentrop **(convicted of counts one and two)**				Foreign policy adviser to the head of State (para. 71 (a))		Political party (foreign policy representative) (para. 71 (a)) Government (Foreign Minister) (para. 71 (a))
Keitel **(convicted of counts one and two)**					Responsibility for invasion plans (placed under his direct and personal guidance) (para. 72 (e))	Military (Chief of the High Command of the Armed Forces — without command authority) (para. 72 (a))
Rosenberg **(convicted of counts one and two)**		Formulating occupation policies (para. 73 (e))			Responsibility for executing occupation policies (para. 73 (e)) Responsibility for civil administration of occupied territories (para. 73 (e)) In charge of an organization whose agents were active in intrigue around the world (para. 73 (b))	Political party (foreign affairs representative, head of Office of Foreign Affairs, Deputy for ideological training) (para. 73 (a)-(c)) Government (Minister for Occupied Territories, member of the legislature)[a] (para. 73 (a) and (e)) Media (newspaper editor and author) (para. 73 (c))
Raeder **(convicted of counts one and two)**						Military (Commander of the Navy, Admiral) (para. 74 (a))
Jodl **(convicted of counts one and two)**				Reported directly to the head of State (para. 76 (b))	Responsibility for strategy and conduct of operations (para. 78)	Military (Chief of the National Defence Section in the High Command, commander of troops, Chief of the Operations Staff of the High Command of the Armed Forces) (para. 76 (a))
von Neurath **(convicted of counts one and two)**				Adviser to the head of State (para. 79 (b))	In charge of the Foreign Office when another State was occupied (para. 79 (e))	Government (Foreign Minister, Minister without Portfolio) (para. 79 (a)) Diplomatic corps (Ambassador) (para. 79 (a))

[a] This position was not an important consideration in determining individual criminal responsibility for counts one and two.

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Frick **(acquitted of count one and convicted of count two)**					Responsibility for war administration (except military and economic) (para. 82 (e)) Responsibility for incorporation and administration of occupied territories (para. 82 (g), (h)) Responsibility for cooperation between national officials and officials in occupied territory (para. 82 (i))	Government (Minister of the Interior, General Plenipotentiary for Administration, head of central offices for incorporation of occupied territories) (para. 82 (a))
Funk **(acquitted of count one and convicted of count two)** **(compare acquittal of Schacht below who preceded Funk in his economic and financial positions)**	Acquitted: not a leading figure in originating the aggressive plans (para. 83) Leading figure in political party organizations used to control the media (para. 84 (a))			Personal economic adviser to the head of State (para. 84 (a))	Acquitted: planning activity in the economic sphere subject to supervision (para. 83) (conviction based on participation in economic preparation for aggressive war, para. 83)	Political party (leading figure in controlling the media) (para. 84 (a)) Government and Media (Press Chief in the Government, Under-Secretary of Propaganda) (para. 84 (a)) Economy and Finance (Minister of Economics, Plenipotentiary General for War Economy, President of the National Bank) (para. 84 (a))
Dönitz **(acquitted of count one and convicted of count two)**	Acquitted: line officer during the common planning or conspiracy phase (para. 85) Conviction: emphasis upon importance of position rather than title, commander of submarines before becoming Commander-in-Chief of the Navy, no mere army or division commander, leader of the submarine division — the principal part of the fleet (para. 87)		Decision-making authority: solely in charge of submarine warfare (para. 87)	Frequently consulted or conferred with the head of State (para. 86 (e))	Acquitted: performed strictly tactical duties during the common planning or conspiracy phase (para. 85) Convicted: responsibility for submarine warfare (paras. 86 (c), 87)	Military (Commander-in-Chief of the Navy, commander of submarine division, Admiral) (para. 86 (a)) Government (Head of State) (para. 86 (g))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Seyss-Inquart **(acquitted of count one and convicted of count two)**		Adopting a policy of maximum utilization of economic potential of occupied territory (para. 89 (e))			Responsibility for governing territory occupied by aggressive war (important to capability of continuing to wage aggressive war) (para. 89 (e))	Government (Minister without Portfolio) (para. 89 (a)) Occupied territories (Minister of Security and Interior, Chancellor, President, Governor, Commander) (para. 89 (a))
Schacht **(acquitted of counts one and two)** **(compare conviction of Funk above who succeeded Schacht in his financial and economic positions)**	Central figure in the rearmament programme (para. 93) Acquitted: loss of influence as central figure in rearmament (para. 92 (a))			Acquitted: not one of the head of State's inner circle most closely involved with the common plan (para. 96)		Government (Minister without Portfolio) (para. 90 (a)) Economy and Finance (Commissioner of Currency, President of the National Bank, Minister of Economics, Plenipotentiary General for War Economy) (para. 90 (a)) Acquitted: resigned after being accused by head of State of upsetting aggressive plans by financial means (para. 92 (e)) Acquitted: dismissed by head of State because of attitude towards the aggression (paras. 92 (g), 95)
Sauckel **(acquitted of counts one and two)**						Acquitted: political party and Government positions not at the national level, except member of the legislature (para. 98)
von Papen **(acquitted of counts one and two)**		Formulating a foreign policy to strengthen the opposition party favouring annexation in another State (para. 99 (h))		Reported directly to and advised the head of State (paras. 99 (g), (i), 100 (c))		Government (Chancellor and Vice-Chancellor) (para. 99 (a)) Diplomatic corps (Ambassador) (para. 99 (a))
Speer **(acquitted of counts one and two)**	Head of the armament industry after the war began (para. 103)			Close personal confidant of the head of State (para. 102 (a))		Government (Minister for Armaments, General Plenipotentiary for Armaments, member of the legislature) (para. 102 (b))
Kaltenbrunner **(acquitted of count one and not charged with count two)**	Leader of a paramilitary group in another State subject to invasion (para. 104 (a))					Government (Head of Security) (para. 104 (c)) Positions in occupied territory (State Secretary for Security, Chief of Security Police) (para. 104 (c))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Frank **(acquitted of count one and not charged with count two)**						Political party (in charge of legal affairs) (para. 106) Government (Minister without Portfolio and member of the legislature) (para. 106) Academia (President of the Law Academy) (para. 106) Dismissed after disagreement about the legal system for the State (para. 107)
Streicher **(acquitted of count one and not charged with count two)**		Acquitted: not closely connected with formulating the policies leading to war (para. 110)		Acquitted: not within the head of State's inner circle of advisers (para. 110)		Government (member of the legislature) (para. 109 (b))
von Schirach **(acquitted of count one and not charged with count two)**	Leader of youth organizations used for intensive propaganda and pre-military training (para. 111 (a))					Political party (in charge of youth organizations) (para. 111 (a)) Government (Cabinet member) (para. 111 (a)) Occupied territories (Governor, Defence Commissioner) (para. 111 (a))
Fritzsche **(acquitted of count one and not charged with count two)**	Acquitted: subordinate position (para. 114)	Acquitted: no control over formulating propaganda policies (para. 114)		Acquitted: never had a conversation with the head of State (para. 115)	Supervising the press (para. 113 (c)) Acquitted: subject to direction and supervision of others (para. 114)	Government and media (head of Government news service, Ministerial Director of the Radio Division of the Propaganda Ministry, Plenipotentiary for the political organization of the radio) (para. 113 (b))
Bormann **(acquitted of count one and not charged with count two)**				Acquitted: influence over the head of State only at the end of the war (not during the common plan or conspiracy phase) (para. 116 (b))		Political party (head of the Chancellery, Secretary to the head of State) (para. 116 (a))
Control Council Law No. 10						High political, civil, military (including General Staff), financial, industrial or economic position in the aggressor State, one of its allies, co-belligerents or satellites (para. 123)

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
***I. G. Farben* case (all 23 defendants acquitted of counts one and five)**	Leaders not followers: persons who plan and lead a State into and in an aggressive war, not those who merely follow the leaders (para. 139) Need to avoid a determination of collective guilt and mass punishment of the entire manpower of a State for which there is no precedent in international law and no justification in human relations (paras. 136-137) Practical limitation on criminal responsibility: need to exclude, in principle, the private soldier on the battlefield, the farmer who increases production to sustain the armed forces and the housewife who conserves fats for making munitions (paras. 136-137) Private citizen should not be required to determine whether his State has committed aggression (para. 137) Acquittal: followers not leaders (para. 137)	Policy makers: responsible for the formulation and execution of policies (paras. 135-136)			Responsibility (para. 130) Authority (para. 130) Acquittal: positions of lesser importance, limited field of operation, and authority of a subordinate nature (para. 140)	Political, military and industrial fields (para. 136) Need to consider positions with the State and with the company (para. 130) Acquittal: not high-level officials in the Government or the military (para. 137)
***Krupp* case (charges dismissed based on insufficient evidence)**						High-level industrialists may be held responsible for crimes against peace (para. 148)

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
***High Command* case (all 14 defendants acquitted of count one; count four was struck without further consideration)**		War is the implementation of a national policy (para. 155) Wars are contests by force between political units, but individuals make the policy that initiates the war and they actually wage the war (para. 150) The policy under which a war is initiated is criminal in its intent and purpose if the individuals at the policy-making level had a criminal intent and purpose in determining the policy (para. 155) War is the means by which the criminal objective is to be attained; waging war is the implementation of the policy; the criminality attached to the waging of an aggressive war should be confined to those who participate in it at the policy level (para. 155) A person who is in a position to shape or influence the policy that initiates or continues an aggressive war becomes criminally responsible if he takes action to further that policy (para. 156) The acts of commanders and staff				

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
***High Command* case** (continued)		officers below the policy level in planning campaigns, preparing means for carrying them out, moving against a State on orders and fighting a war after it has been instituted do not constitute planning, preparing, initiating and waging war or initiating an invasion that international law denounces as criminal (para. 158) A dictator who is supreme in both the civil and military fields is not solely criminally responsible for political and military policies. Even if he has absolute authority, he alone cannot formulate a policy of aggressive war and implement that policy by preparing, planning and waging war (para. 159) The boundary between the criminal and the excusable participation of an individual engaged in waging an aggressive war is somewhere between (a) the dictator and supreme commander of the military forces of the State and (b) the common soldier (para. 159) The relevant issue for determining criminality for crimes against peace is the power to				

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
***High Command* case** (continued)		shape or influence the policy of the State, not a person's rank or status (para. 161) A person may influence a national policy of war with respect to political or military matters (para. 162) Acquittal: the defendants were not on the policy level (para. 165)				
***Ministries* case** (five defendants convicted (two acquitted on review) and nine defendants acquitted of crimes against peace)					Persons holding positions of authority (para. 196)	Persons holding positions in various departments of Government charged with the administration or execution of the programmes of aggression and exploitation (para. 196)
von Weizsäcker (acquitted of the invasion of Austria and the aggression against Czechoslovakia (initially convicted of invasion and forcible incorporation of Bohemia and Moravia), Poland, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Greece and Yugoslavia, Russia and the United States)		Aggressive war against Poland: not guilty; he held a prominent position, he was a principal cog in the foreign policy machinery, but he was an implementer not an originator (para. 210)	Aggressive war against Poland: not guilty; could oppose and object, but not override (para. 210)		All divisions of the Foreign Office were subordinate to him, all their activities were channelled through him or his office, all divisions reported to him and received instructions from him (para. 200)	Government (high-level position in the Foreign Ministry) (para. 200) Diplomatic corps (Ambassador) (para. 200)
Keppler (convicted of the aggression against Austria (upheld on review) and Czechoslovakia (upheld on review))				Economic adviser to the head of State, direct representative of the head of State (paras. 217 (c), 218)	Full authority over Nazi Party activities in Austria, exercised functions as direct representative of head of State (para. 217 (d))	Manufacturer, important role in the economy (para. 217 (a))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Woermann **(acquitted of all charges of aggression (initially convicted of aggression against Poland))**		Duties and assignments have a bearing on plans and policies being considered or executed, power in shaping policy (paras. 222, 226)			Duties and assignments involved the exercise of a wide discretion; wide discretionary power exercised to an extensive degree, considerable authority (paras. 222, 223, 226)	Government (Ministerial Director and Chief of the Political Division of the Foreign Office) (para. 222)
Lammers **(convicted of aggression against Czechoslovakia, Poland, Norway, the Netherlands, Belgium, Luxembourg and Russia (upheld on review); acquitted of aggression against Austria, Denmark)**		Great importance and influence in distinctly policy-making sphere, policy-shaping power (paras. 232, 240, 241)	Collaborated in making fundamental decisions (para. 232 (d))	Great importance and influence in higher circles, collaborated with and greatly helped the head of State and the hierarchy in the aggressive plans (para. 232 (a))	Exercised discretion and power in formulating and furthering plans and acts of criminal aggression (para. 232 (b)) Power and authority actually exercised is the important thing (paras. 240, 241)	Government (Reich Minister, Chief of the Chancellery) (para. 232 (a))
Koerner **(convicted of aggression against Russia (upheld on review))**		Wide scope of authority and discretion which enabled him to shape policy (paras. 243, 244)		Close association with high-level official (para. 244)	In charge of management and supervision of the office of the Four Year Plan, wide scope of authority and discretion which enabled him to shape policy and influence plans and preparations for aggression (paras. 243, 244)	Government (deputy to Göring concerning the Four Year Plan to prepare Germany for war) (para. 243)
Ritter **(acquitted)**						Government (Foreign Office, position of substantial importance as liaison between Foreign Office and the military) (para. 251) Diplomatic corps (Ambassador) (para. 251)
Vessenmayer **(acquitted)**						Minor position in defendant Keppler's office (para. 252)

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Stuckart **(acquitted)**					Responsible chief of a principal section of the Ministry of the Interior before becoming Secretary of State (para. 253)	Government (Secretary of State in the Ministry of the Interior) (para. 253)
Darré **(acquitted)**						Government (Minister for Food and Agriculture, member of the Cabinet) (para. 254)
Dietrich **(acquitted)**				Constant attendance at the head of State's headquarters as a member of his entourage (para. 255)	Controlled the press (para. 255)	Press (high-level positions in German and Nazi press) (para. 255)
Berger **(acquitted)**						
Schellenberg **(acquitted)**	Minor official (para. 257)					
Schwerin von Krosigk **(acquitted)**						Government (Minister of Finance, member of the Cabinet) (para. 258)
Pleiger **(acquitted)**						
Roechling **case (initial conviction, reversed on appeal)**		Only the principal originators of crimes against peace are to be prosecuted and punished (para. 263)				
Tokyo Charter						
Tokyo Judgement	Leaders (para. 303)					
Araki, Sadao **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33, 35 and 36)**	One of the leaders of the conspiracy, a prominent leader of the Army movement, supported its policy of political domination at home and military aggression abroad (para. 325 (b))	Helped to formulate and vigorously advocated the military party's policy to enrich Japan at the expense of its neighbours (para. 325 (d)) Approved the Army's polices in China to separate territory politically from China, to create a Japanese-controlled government and to place its economy under Japanese domination (para. 325 (e))	Approved military operations in China (para. 325 (h))			Military (prominent position in the Army hierarchy as a high-ranking officer, Lieutenant-General and General); Government (high-level cabinet positions, Minister of War, Minister of Education) (para. 325 (a))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Araki, Sadao (continued)		Played a prominent part in developing the military and political policies in China (para. 325 (f))				
Dohihara, Kenji **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**	Leadership positions in the military (para. 327 (a))	Played a prominent part in developing by political intrigue, and by the threat and the use of force the aggressive policy of the Japanese military party in China (para. 327 (c))				Military (Colonel and General in the Army) (para. 327 (a))
Hashimoto, Kingoro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**	Leadership position (para. 329 (a)) Principal in forming the conspiracy (para. 329)					Military (Army officer) (para. 329 (a))
Hata, Shunroko **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**	Leadership positions (para. 331 (a))	Exerted considerable influence on government policy (para. 331 (b))				Government (War Minister) and Military (Commander-in-Chief of the expeditionary forces in China) (para. 331 (a))
Hiranuma, Kiichiro **(convicted of counts 1, 27, 29, 31, 32 and 36; acquitted of counts 33 and 35)**	Leadership positions (para. 333 (a))					Government (Prime Minister) (para. 333 (a))
Hirota, Koki **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33 and 35)**	Leader (para. 335 (b))	Formulated and adopted the national policy of expansion which led to war with the Western Powers (para. 335 (d))				Government (Foreign Minister and Prime Minister) (para. 335 (a))
Hoshino, Naoki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 35)**	Leader (para. 339 (d))					High-level positions in the Government and in Manchukuo (para. 339 (a), (c))
Itagaki, Seishiro **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**						Government (Minister of War) and the military (Divisional Commander and Chief of Staff of China Expeditionary Army, Commander-in-Chief of the Army in Korea (para. 341 (g), (k))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Kaya, Okinori **(convicted of counts 1, 27, 29, 31 and 32)**		Took part in formulating the aggressive policies (para. 343 (b))				Government (Finance Minister) (para. 343 (a))
Kido, Koichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33, 35 and 36)**				Adviser to the Emperor, position of great influence with the Emperor, intimate relationship with high-level officials (para. 344 (g), (h))		Government (member of the Cabinet) (para. 344 (b))
Kimura, Heitaro **(convicted of counts 1, 27, 29, 31 and 32)**	He was not a leader (para. 346 (d))	Took part in formulating and developing policies (para. 346 (d))				Government (Vice-Minister of War) and the military (army officer, Commander-in-Chief of the Burma Area Army) (para. 346 (a))
Koiso, Kuniaki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**	Leader (para. 347 (a))					Government (Prime Minister) (para. 347 (e))
Matsui, Iwane **(acquitted of counts 1, 27, 29, 31, 32, 35 and 36)**						Military (senior officer, General) (para. 350)
Minami, Jiro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**						Government (Minister of War), military (General, Commander-in-Chief of the Kwantung Army) (para. 351 (a), (h))
Muto, Akira **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 36)**						Government (Chief of the Military Affairs Bureau of the Ministry of War) (para. 353 (a))
Oka, Takasumi **(convicted of counts 1, 27, 29, 31 and 32)**		Influential in deciding Japanese policy (para. 355 (c))				Military (Rear Admiral) (para. 355 (a))
Oshima, Hiroshi **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**	Principal conspirator (para. 356)					Diplomatic corps (Ambassador) (para. 356 (a))
Sato, Kenryo **(convicted of counts 1, 27, 29, 31 and 32)**		Position enabling a person to influence policy-making (para. 360)				Government (important official) (para. 359 (e)) Military (Lieutenant Colonel, Major General, Chief of the Military Affairs Bureau of the Army, Army Commander) (para. 359 (a), (c)-(e))

Source	*Leader*	*Policy maker*	*Decision maker*	*Influenced high-level officials*	*Responsibility, authority, discretion*	*Sectors*
Shigemitsu, Mamoru **(convicted of counts 27, 29 and 31 to 33; acquitted of counts 1 and 35)**		Acquitted of count 1: did not play any part in policy-making (para. 362 (b))				Government (Foreign Minister) (para. 361 (a))
Shimada, Shigetaro **(convicted of counts 1, 27, 29, 31 and 32)**			Decision maker (para. 364 (c))			Military (Navy Minister and Chief of the Navy General Staff) (para. 364 (b))
Shiratori, Toshio **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**		Expressed views on policy matters which received consideration in high quarters (para. 366)				Government (Chief of the Information Bureau of the Foreign Office) (para. 366 (a)) Diplomatic corps (Ambassador) (para. 366 (h)) Acquitted of some counts because he never occupied a position that would justify finding that he had waged any war of aggression (para. 368)
Suzuki, Teiichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**		Policy maker (para. 369 (f))				Military (Lieutenant Colonel) (para. 369 (a)) Government (Minister without Portfolio) (para. 369 (e))
Togo, Shigenori **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**			Decision maker (para. 371 (c))			Government (Foreign Minister) (para. 371 (a))
Tojo, Hideki **(convicted of counts 1, 27, 29 and 31 to 33; acquitted of count 36)**	Principal in the activities of the conspirators (para. 374 (a))		Played a leading part in the decision to go to war (para. 374 (j))	Used his great influence to support the policy of preserving the fruits of Japan's aggression against China (para. 374 (j))		Military (Chief of Staff of the Kwantung Army) (para. 374 (a)) Government (Minister of War, Prime Minister) (para. 374 (f), (g))
Umezu, Yoshijiro **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**						Military (Army officer, commander of troops, Chief of the Army General Staff) (para. 377 (a), (b), (g), (h)) Government (Vice-Minister of War) (para. 377 (c))

Table 6
Individual criminal responsibility: Knowledge

Note. The definition of crimes against peace contained in the constituent instruments of the tribunals did not address the question of the knowledge required for an individual to be responsible for such crimes. The tribunals considered knowledge to be an essential element of individual responsibility for these crimes. The type of knowledge required depended on the stage at which an individual participated in the aggressive war, including knowledge of the aggressive plans, the aggressive purpose of the preparations and the aggressive character of the war to be initiated or waged. In some cases, the tribunals also considered the necessity of actual knowledge, the existence of common knowledge, the possibility of inferring or imputing knowledge and the possible indications of knowledge.

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Nuremberg Charter					
Nuremberg Judgement					
Göring **(convicted of counts one and two)**					Attended high-level meetings concerning the plans or preparations for aggression (paras. 64 (g), 66) Was informed by the head of State of all important military and political problems (para. 65)
Hess **(convicted of counts one and two)**	Informed participant in the aggression (para. 67 (g)) Knowledge of aggressive plans when they came into existence (para. 68) Knowledge of the head of State's aggressive ambitions and willingness to use force to achieve those aims (para. 69)			Relationship to head of State (closest personal confidant): must have been informed of aggressive plans when they came into existence (para. 68)	Relationship to head of State (para. 68) Public statement concerning head of State's willingness to resort to war (para. 67 (i))
von Ribbentrop **(convicted of counts one and two)**	Advance knowledge of attacks (para. 71 (g))				Attended high-level meetings concerning the plans or preparations for aggression (para. 71 (e), (f), (h), (i)) Sent a document to the head of State concerning the plans for aggression (para. 71 (c))

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Keitel **(convicted of counts one and two)**					Attended high-level meetings concerning the policies, decisions, plans or preparations for aggression (para. 72 (d), (f), (h)) Discussed aggressive plans with the head of State and high-level officials (para. 72 (e) and (h)) Was informed of aggressive plans by head of State (para. 72 (g)) Signed, initialled or issued documents concerning the plans for aggression (para. 72 (b)-(d), (f), (g))
Rosenberg **(convicted of counts one and two)**					Originated an aggressive plan (para. 73 (d)) Was informed of aggressive plans by head of State (para. 73, subpara. 5) Gave a speech about the aggressive plans (para. 73 (e)) Attended high-level meeting concerning the plans for aggression (para. 73 (e))
Raeder **(convicted of counts one and two)**					Attended high-level meetings concerning the plans or preparations for aggression (para. 74 (d)) Discussed the plans or preparations for aggression with the head of State and other high-level officials (para. 74 (d), (f)) Received documents concerning the aggressive plans or preparations (para. 74 (e))

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Jodl **(convicted of counts one and two)**	Knowledge of the plan to attack (para. 76 (f))				Attended high-level meetings concerning the aggressive plans (para. 76 (g), (h)) Received instructions from the head of State concerning the aggressive plans (para. 76 (c)) Gave instructions to prepare plans for an attack (para. 76 (h)) Initialled and issued documents concerning the plans or preparations for aggression (para. 76 (c), (d), (f)-(h)) Discussed the aggressive plans with the head of State and other high-level officials (para. 76 (e), (f), (h))
von Neurath **(convicted of counts one and two)**	Knowledge of the aggressive plans (para. 80) Defence claim: he was shocked when he learned of the aggressive plans and offered to resign from his official position (para. 80) Rejected: he subsequently retained a formal relationship with the aggressive regime and high-level positions with knowledge of the aggressive plans (para. 80)				Attended a high-level meeting concerning the aggressive plans (para. 80)
Frick **(acquitted of count one and convicted of count two)**	Acquitted: did not participate in any of the high-level meetings at which the head of State outlined the aggressive plans (para. 81)				Convicted: drafted, signed, issued or administered laws preparing for or carrying out the aggressive plans (para. 82 (c), (g), (h))

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Funk **(acquitted of count one and convicted of count two)**					Attended high-level meetings concerning the plans or preparations for aggression (or was informed of them) (para. 84 (b)) Drafted or approved documents concerning the plans or preparations for aggression (para. 84 (b), (c)) Gave speeches concerning the plans or preparations for aggression (para. 84 (d), (f))
Dönitz **(acquitted of count one and convicted of count two)**	Acquitted: did not attend important meetings concerning the aggressive plans; not informed of the decisions taken at those meetings (para. 85)				Recommended aggressive plans (para. 86 (d)) Consulted the head of State concerning the aggressive plans (para. 86 (e)) Issued orders to carry out the aggressive plans (para. 86 (d))
Seyss-Inquart **(acquitted of count one and convicted of count two)**					Participated in intrigue preceding aggressive action (para. 89 (b))
Schacht **(acquitted of counts one and two)**	Defence claim: participated in the rearmament programme before discovering that it was for aggressive purposes (para. 94)	Knowledge in fact of the aggressive plans (para. 96)		Good position to understand the significance of rearmament and to realize that the economic policy was adopted for the object of war (para. 95) Acquitted: insufficient evidence to establish beyond a reasonable doubt the necessary inference that a person in fact knew of the aggressive plans (para. 96)	Gave a speech claiming credit for the economic policy creating the armament level necessary for the foreign policy resulting in the occupation and incorporation of other States (para. 90 (g))
Sauckel **(acquitted of counts one and two)**					

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
von Papen **(acquitted of counts one and two)**					Attended a meeting concerning the aggressive policy (para. 99 (f)) Was in the Chancellery when the occupation of another State was ordered (para. 99 (k))
Speer **(acquitted of counts one and two)**					
Kaltenbrunner **(acquitted of count one and not charged with count two)**					
Frank **(acquitted of count one and not charged with count two)**					
Streicher **(acquitted of count one and not charged with count two)**	Acquitted: no knowledge of aggressive policies, never attended high-level meetings when head of State explained to his leaders the decisions relating to aggression (para. 110)				
Von Schirach **(acquitted of count one and not charged with count two)**					
Fritzsche **(acquitted of count one and not charged with count two)**	Acquitted: never achieved the stature to attend the planning conferences which led to aggressive war, not informed of decisions taken at the conferences (para. 115)				Attended daily staff briefings to receive instructions (para. 113 (f))
Bormann **(acquitted of count one and not charged with count two)**	Acquitted: no knowledge of the plans to prepare, initiate or wage aggressive wars, never attended the important conferences at which the head of State revealed the plans for aggression (para. 117)			Acquitted: knowledge cannot be conclusively inferred from the positions he held, which did not give him the necessary access (para. 117)	

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Control Council Law No. 10					
***I.G. Farben* case (all 23 defendants acquitted of counts one and five)**	Knowledge of the aggressive plan or aim (paras. 129, 140) Knowledge that rearmament was part of a plan or was intended to be used in waging aggressive war (para. 131) Determined knowledge from the situation as it appeared, or should have appeared, to the person at the time (para. 132) Conclusive evidence of knowledge: the person must have been informed of the aggressive plans because the person had a close relationship with the head of State or attended a meeting at which the head of State disclosed the plans for aggressive war (para. 129) Acquittal: evidence failed to establish beyond a reasonable doubt that the endeavours and activities were undertaken and carried out with the knowledge that they were preparing the State for participation in an aggressive war or wars that had already been planned either generally or specifically by the head of State and his immediate circle of civil and military advisers (para. 139)		Common or general knowledge that would apprise a person of the existence of the plans or the ultimate purpose to wage aggressive war (para. 133) Head of State attempted to mislead the public, discrepancy between his public statements and his plans disclosed at secret meetings: the average citizen (professional man, farmer, industrialist) could not be charged by those events with knowledge that the rulers of the State were planning to plunge it into a war of aggression (para. 133) Occasional belligerent utterances by head of State's subordinates could only by remote inference, formed in retrospect, be connected with a plan for aggressive war (para. 133) Conclusion: common knowledge of a general plan to wage aggressive war or of specific plans to attack individual countries did not prevail in the aggressor State (para. 133)	Prosecution argument: defendants must have known from events transpiring within the State that their action in aiding rearmament was preparing for aggressive war; the magnitude of the rearmament effort conveyed that knowledge (para. 134) Armament production in excess of defence requirements in the context of rapid and extensive rearmament might impute knowledge if: individual was military expert or military person; there was knowledge of the extent of the general rearmament plan or how far it had progressed at a given time; and knowledge of the armament strength of neighbouring States (para. 134) Effective armament is relative; its efficacy depends upon the relative strength of the armament of other States against which it may be used offensively or defensively (para. 134) Acquittal: defendants did not meet any of the above criteria (para. 134)	
***Krupp* case (dismissed charges based on insufficient evidence)**	Knowledge that a person is participating in, taking a consenting part in, aiding, and abetting the invasion or war (para. 145)	Actual knowledge of the plans for an invasion or a war of aggression (para. 145)			

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
***High Command* case (all 14 defendants acquitted of count one; count four was struck without further consideration)**	Knowledge that the planning and preparation for the invasion and war in which a person is involved are concrete plans and preparations for aggressive war and for war otherwise in violation of international laws and treaties (para. 157) A person may come into possession of knowledge that the invasion and war to be waged are aggressive and unlawful after the policy to initiate and wage aggressive war is formulated (para. 157)	Actual knowledge that an aggressive war was intended and that if launched it would be an aggressive war (para. 156)			
***Ministries* case (five defendants convicted (two acquitted on review) and nine defendants acquitted of crimes against peace)**	Knowledge that the wars and invasions are aggressive is an essential element of guilt (para. 197) Knowledge of the intent to initiate and wage aggressive war (para. 198) A person is not condemned for fighting in what he believes is the defence of his country, even if that belief is mistaken (para. 198) A person is not expected to undertake an independent investigation to determine whether or not the cause for which he fights is the result of an aggressive act of his own Government (para. 198)	A person can be guilty only where knowledge of aggression in fact exists; suspicions that the war is aggressive are not sufficient (para. 198) Any other test of guilt would involve an impracticable and unjust standard of conduct (para. 198)			

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
von Weizsäcker **(acquitted of the invasion of Austria and the aggression against Czechoslovakia (initially convicted of invasion and forcible incorporation of Bohemia and Moravia), Poland, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Greece and Yugoslavia, Russia and the United States)**	Did not attend the conferences at which the head of State announced the aggressive plans, but became familiar with the aggressive plans from reliable sources who furnished him with accurate information (para. 200) Invasion of Austria: conduct for the purpose of supporting the annexation of another State is not a crime in the absence of knowledge that the conduct is part of a scheme to use force and, if necessary, aggressive war or invasion, no evidence of knowledge of intent to invade Austria (para. 204) Annexation of the Sudentenland by the Munich Pact: not guilty; he did not know of the intent not to abide by the agreement and of the false assurances of no further territorial aims (para. 205) Invasion and forcible incorporation of Bohemia and Moravia: initial conviction, full knowledge of the facts (para. 207) Invasion of Denmark and Norway: acquitted, no prior knowledge, knowledge of aggressive plans only after the decision had been made by the head of State and the plans had been made and were being implemented (para. 211) Invasion of Belgium, the Netherlands and Luxembourg: acquitted,				Aggressive war against Poland: not guilty; was not in the confidence of the head of State or the Foreign Minister (para. 210)

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
von Weizsäcker **(continued)**	had prior knowledge of the plans and preparations for the invasions, but did not originate the invasions (para. 212) Invasion of Russia acquitted, knowledge of the plans to invade, mere knowledge of aggressive war or of criminal acts is not sufficient (para. 215)				
Keppler **(convicted of the aggression against Austria (upheld on review) and Czechoslovakia (upheld on review))**	Knowledge of the unwarranted interference in Austrian affairs (para. 218) Knowledge of the plan for aggression against Czechoslovakia and that it was indefensible (para 220)				
Woermann **(acquitted of all charges of aggression (initially convicted of aggression against Poland))**	Knowledge of the criminal nature of the aims of the aggression against Poland, that an unlawful invasion was imminent and that there was no legal excuse therefor (paras. 224-225) Advised of what was transpiring concerning Czechoslovakia (para. 226) Knowledge of the criminal plans regarding Belgium, the Netherlands and Luxembourg (para. 228) Knowledge of the contemplated Italian invasion of Greece (para. 229) Possessed information with respect to activities indicating that aggression against Yugoslavia was being contemplated (para 230)			Flow of events and material which crossed his desk were of such a character that the plans and intent were made clear even if he was not informed of the date of invasion or of the tactical and strategic plans of the Army (para. 225)	

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Woermann (continued)	Advised of what was transpiring concerning the aggression against Russia (para. 231)				
Lammers **(convicted of aggression against Czechoslovakia, Poland, Norway, the Netherlands, Belgium, Luxembourg and Russia (upheld on review); acquitted of aggression against Austria, Denmark)**	Kept informed of measures concerning planning for invasions and other aggressions (para. 232 (e)) Knowledge of circumstances leading up to the invasion and of the plans and preparations against Austria (para. 233) Knowledge of the plans to invade Czechoslovakia (para. 234) Knowledge of the aggression against Poland (para. 235) Knowledge of the plans and preparations for the invasion of Norway at an early date (para. 236)				Knowledge of the aggression against Belgium, the Netherlands, Luxembourg and Russia based on the decrees he issued or signed (paras. 237-238)
Koerner **(convicted of aggression against Russia (upheld on review))**	Knowledge of the aggressive nature of the plans and of the role of the Four Year Plan in the plans, preparations, and execution of aggressions (para. 244) Austria: no knowledge of exact date of invasion, knowledge invasion contemplated, knowledge of war munitions production for aggressive purposes after the invasion (para. 245) Czechoslovakia: aware of the impending aggression before it occurred (para. 246) Poland: informed by high-level official of decision to attack (para. 247)				Attended meetings where policies were formulated; wide scope of authority and activities; close association with high-level official (para. 244)

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Koerner (continued)	Russia: knowledge or advance notice of the planned attack (para. 248)				
Ritter **(acquitted)**	Knowledge is an essential element of guilt (para. 251) No knowledge that the wars were aggressive (para. 251)				
Vessenmayer **(acquitted)**	No knowledge of the aggressive plans (para. 252)				Unlikely that a person holding a minor position would be informed of the aggressive plans (para. 252)
Stuckart **(acquitted)**	No knowledge of aggressions (para. 253)				Did not attend conferences in which the plans for aggressive wars were proposed and discussed (para. 253)
Darré **(acquitted)**	No knowledge of aggressive plans (para. 254)			Necessary to infer that he knew the war was likely and that it would be an aggressive war; danger of setting inference upon inference and drawing a conclusion of guilt from the second inference; this double inference involves a degree of speculation in which the likelihood of mistake is too great (para. 254)	Did not attend conferences at which the plans for aggression were disclosed; no evidence that was informed of them (para. 254)
Dietrich **(acquitted)**	Suspicion of knowledge of the aggressive plans does not take the place of proof (para. 255)				
Berger **(acquitted)**	No knowledge of aggressions; no knowledge that the wars were aggressive or violated international law (para. 256)				
Schellenberg **(acquitted)**	No knowledge of aggressive purpose; no knowledge that the wars were aggressive (para. 257)				

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Schwerin von Krosigk **(acquitted)**	No knowledge that the wars were aggressive and therefore without justification (para. 258)				Did not attend the conferences at which the aggressive plans were announced, was not one of the confidants of the head of State (para. 258)
Pleiger **(acquitted)**	No knowledge of aggressive war, knowledge of rearmament (para. 259)				
Roechling **case (initial conviction, reversed on appeal)**					
Tokyo Charter					
Tokyo Judgement					
Araki, Sadao **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33, 35 and 36)**					
Dohihara, Kenji **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**					
Hashimoto, Kingoro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**	Knowledge that the war against China was aggressive (para. 329, subpara. 8)				
Hata, Shunroko **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**					
Hiranuma, Kiichiro **(convicted of counts 1, 27, 29, 31, 32 and 36; acquitted of counts 33 and 35)**					
Hirota, Koki **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33 and 35)**	Knowledge of the aggressive plans and activities (para. 335 (b))				
Hoshino, Naoki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 35)**					
Itagaki, Seishiro **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**	Knowledge of the aggressive character of the wars (para. 341)				
Kaya, Okinori **(convicted of counts 1, 27, 29, 31 and 32)**					

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Kido, Koichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33, 35 and 36)**					
Kimura, Heitaro **(convicted of counts 1, 27, 29, 31 and 32)**	Full knowledge of the plans and preparations for the Pacific War and the hostilities in China and of the illegality of the Pacific War (para. 346 (b), (f))			Was in a position to learn and was kept fully informed of all government decisions and actions during the crucial negotiations with the United States (para. 346 (b))	
Koiso, Kuniaki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**					
Matsui, Iwane **(acquitted of counts 1, 27, 29, 31, 32, 35 and 36)**	Insufficient evidence to justify an inference that he had knowledge of the criminal character of the war in China (para. 350)			Must have been aware of the purposes and policies of the conspirators because of his close association with those who conceived and carried out the conspiracy (para. 350)	
Minami, Jiro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**					
Muto, Akira **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 36)**					
Oka, Takasumi **(convicted of counts 1, 27, 29, 31 and 32)**					
Oshima, Hiroshi **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**					
Sato, Kenryo **(convicted of counts 1, 27, 29, 31 and 32)**	Knowledge that the motive of the attacks on China was to seize its wealth (para. 360)				
Shigemitsu, Mamoru **(convicted of counts 27, 29, 31, 32 and 33; acquitted of counts 1 and 35)**	Fully aware that the Pacific War was a war of aggression because he knew of the conspirators' policies which had caused the war (para. 361 (b))				

Source	*Knowledge*	*Actual knowledge*	*Common knowledge*	*Inferred or imputed knowledge*	*Indications of knowledge*
Shimada, Shigetaro **(convicted of counts 1, 27, 29, 31 and 32)**					
Shiratori, Toshio **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**					
Suzuki, Teiichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**					
Togo, Shigenori **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**					
Tojo, Hideki **(convicted of counts 1, 27, 29, 31, 32 and 33; acquitted of count 36)**					
Umezu, Yoshijiro **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**	Knowledge of the plans of the conspirators to carry on the war in China (para. 377 (d))				

Table 7
Individual criminal responsibility: Intent

Note. The definition of crimes against peace contained in the constituent instruments of the tribunals did not address the question of intent, motive or purpose as an element of individual responsibility for such crimes. In some instances, the tribunals considered these elements in determining individual responsibility for such crimes.

Source	*Intent*	*Motive*	*Purpose*
Nuremberg Charter			
Nuremberg Judgement			
Göring **(convicted of counts one and two)**			
Hess **(convicted of counts one and two)**			
von Ribbentrop **(convicted of counts one and two)**			
Keitel **(convicted of counts one and two)**			
Rosenberg **(convicted of counts one and two)**			
Raeder **(convicted of counts one and two)**			
Jodl **(convicted of counts one and two)**			
von Neurath **(convicted of counts one and two)**			
Frick **(acquitted of count one and convicted of count two)**			
Funk **(acquitted of count one and convicted of count two)**			
Dönitz **(acquitted of count one and convicted of count two)**			
Seyss-Inquart **(acquitted of count one and convicted of count two)**			
Schacht **(acquitted of counts one and two)**			
Sauckel **(acquitted of counts one and two)**			
von Papen **(acquitted of counts one and two)**			Purpose: to undermine the Government of another State and strengthen the opposition party to bring about the annexation of the State (para. 101) Acquitted: not established beyond a reasonable doubt that the purpose of his activities was to occupy another State by aggressive war if necessary (para. 101)

Source	*Intent*	*Motive*	*Purpose*
Speer **(acquitted of counts one and two)**			
Kaltenbrunner **(acquitted of count one and not charged with count two)**			
Frank **(acquitted of count one and not charged with count two)**			
Streicher **(acquitted of count one and not charged with count two)**			
von Schirach **(acquitted of count one and not charged with count two)**			
Fritzsche **(acquitted of count one and not charged with count two)**			
Bormann **(acquitted of count one and not charged with count two)**			
Control Council Law No. 10			
I.G. Farben **case (all 23 defendants acquitted of counts one and five)**	Need to determine a person's state of mind from the situation as it appeared, or should have appeared, to the person at the time (avoid danger of viewing conduct wholly in retrospect) (para. 132)	Need to determine a person's motive from the situation as it appeared, or should have appeared, to the person at the time (avoid danger of viewing conduct wholly in retrospect) (para. 132)	
Krupp **case (charges dismissed based on insufficient evidence)**			
High Command **case (all 14 defendants acquitted of count one; count four was struck without further consideration)**	The policy under which a war is initiated is criminal in its intent if the individuals at the policy-making level had a criminal intent in determining the policy (para. 155) A person who, to the extent of his ability, hinders or prevents the initiation or continuation of an aggressive war does not have a criminal intent (para. 156)		The policy under which a war is initiated is criminal in its purpose if the individuals at the policy-making level had a criminal purpose in determining the policy (para. 155)
Ministries **case (five defendants convicted (two acquitted on review) and nine defendants acquitted of crimes against peace)**	Intent to initiate and wage aggressive war (para. 198)		
von Weizsäcker **(acquitted of the invasion of Austria and the aggression against Czechoslovakia (initially convicted of invasion and forcible incorporation of Bohemia and Moravia), Poland, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Greece and Yugoslavia, Russia and the United States)**			

Source	*Intent*	*Motive*	*Purpose*
Keppler **(convicted of the aggression against Austria (upheld on review) and Czechoslovakia (upheld on review))**			
Woermann **(acquitted of all charges of aggression (initially convicted of aggression against Poland))**			
Lammers **(convicted of aggression against Czechoslovakia, Poland, Norway, the Netherlands, Belgium, Luxembourg and Russia (upheld on review); acquitted of aggression against Austria, Denmark)**			
Koerner **(convicted of aggression against Russia (upheld on review))**			
Ritter **(acquitted)**			
Vessenmayer **(acquitted)**			
Stuckart **(acquitted)**			
Darré **(acquitted)**			
Dietrich **(acquitted)**			
Berger **(acquitted)**			
Schellenberg **(acquitted)**			
Schwerin von Krosigk **(acquitted)**			
Pleiger **(acquitted)**	Rearmament is only an offence against international law when it is undertaken with the intent to use the rearmament for aggressive war (para 259)		Rearmament is only an offence against international law when it is undertaken with the purpose of using the rearmament for aggressive war (para. 259)
Roechling **case (initial conviction, reversed on appeal)**	Rearmament was not carried out with the intent and aim of permitting an invasion of other countries or a war of aggression in violation of international law or international agreements (para. 264)		
Tokyo Charter			
Tokyo Judgement			

Table 8
Individual criminal responsibility: Participation

Note. The definition of crimes against peace contained in the constituent instruments of the tribunals indicated the types of participation entailing individual responsibility for such crimes. The jurisprudence of the tribunals addressed the necessary level or degree of participation for individual responsibility for these crimes (e.g., active, sufficient or significant participation). It also illustrated the wide variety of conduct (action or inaction) that may constitute the various forms of participation in crimes against peace.

Although participation in a common plan or conspiracy was included as a separate offence in the definition of crimes against peace and as a separate charge in the indictments against the various individuals, the tribunals generally considered this charge together with the charge relating to planning an aggressive war because of the close relationship between the two (Nuremberg Tribunal: the same evidence was offered to support the counts which were in substance the same, para. 58; *I.G. Farben* case: counts predicated on the same facts and involved the same evidence, para. 129; *High Command* case: conspiracy charges included no separate substantive offence and raised no new issue, para. 149; Tokyo Tribunal: it is not necessary to convict individuals of conspiracy as well as planning and preparing for aggressive war since those who participate in the latter stage may be original conspirators or later adherents, para. 290).

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Nuremberg Charter		Planning (para. 2)	Preparation (para. 2)	Initiation of war (para. 2)	Waging (para. 2)	Participation in a common plan or conspiracy to accomplish any of the foregoing (para. 2)
Nuremberg Judgement		Criminal planning: a concrete plan to wage war, not merely declarations of a party programme or political affirmations (para. 60) Planning is essential to making war (para. 61) Systematic planning (para. 61) Planning to prepare and wage war (para. 61) Continued planning with aggressive war as the object (para. 61)	Preparation is essential to making war (para. 61) Systematic preparation (para. 61)			Conspiracy: criminal purpose is clearly outlined; proximity to time of decision and action (para. 60) Common planning consisting of many separate plans is sufficient; a single conspiracy is not required (para. 61) (see also Planning) Dictator does not prevent others from participating in the common planning (para. 62)

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Nuremberg Judgement (continued)						Other persons may participate in the execution of a plan conceived and directed by one person (para. 62) Person becomes a party to the plan when the person cooperates with knowledge of the aims (para. 62)
Göring **(convicted of counts one and two)**		Attending high-level meetings (para. 64 (g)) Planning an air offensive (para. 64 (t)) Defence claim: initially opposed aggressive plan for strategic reasons (para. 64 (l)) Rejected: subsequently participated in aggression (para. 64 (l))	Being instrumental in bringing the political party with aggressive aims to power and consolidating its power (para. 64 (h)) Attending high-level meetings (para. 64 (g)) Being the prime mover in the military and diplomatic preparation for war (para. 66) Playing a leading role in rearmament, especially offensive weapons (para. 64 (f)) Giving false assurances of peaceful intentions to another State (para. 64 (t)) Obtaining concessions from another State by threat of force (para. 64 (i)) Engaging in diplomatic manoeuvres to prevent a third State from aiding the target State (para. 64 (j))	Participating in initial attack (para. 64 (k)) Participating in initial invasion (para. 64 (l))	Being the central figure in the annexation of another State after invasion (not charged as aggressive war) (para. 64 (h)) Commanding armed forces during an aggressive war (Commander-in-Chief of the Air Force) (paras. 64 (k), 65) Playing an active role in executing an aggressive campaign (para. 64 (m))	Attending high-level planning meetings (para. 64 (g))

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Göring (continued)			Playing an active role in preparing aggressive campaigns (para. 64 (m))			
Hess **(convicted of counts one and two)**			Actively supporting preparations for war (signing compulsory military service law) (para. 67 (e)) Supporting vigorous rearmament (para. 67 (f)) Intervening in the internal affairs of another State (para. 67 (h), (i))		Participating in the annexation or incorporation (signing the law or decree) and administration of another State after invasion (not charged as aggressive war) (para. 67 (h), (i)) Being an informed and willing participant in the aggression (para. 67 (g)) Taking action to carry out aggressive plans whenever necessary (para. 68) Signing decrees incorporating territories occupied by aggression (para. 67 (j))	
von Ribbentrop **(convicted of counts one and two)**		Advising the head of State regarding aggressive plans (para. 71 (c)) Attending meetings concerning aggressive plans (para. 71 (h), (i)) Planning the exploitation of another State (para. 71 (i))	Attending a meeting to obtain concessions from another State by threat of force (para. 71 (d), (e)) Intervening in the internal affairs of another State (para. 71 (e)) Attempting to use diplomatic pressure to occupy another State (para. 71 (e)) Engaging in diplomatic activity leading up to an attack: obtaining the support of a third State for the aggression (para. 71 (e), (h)), entering		Signing the law incorporating another State after invasion (not charged as aggressive war) (para. 71 (d)) Signing the law establishing a protectorate over part of another State after invasion (not charged as aggressive war) (para. 71 (e))	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
von Ribbentrop **(continued)**			into negotiations with a third State in bad faith to prevent aid to a target State rather than settle the dispute (para. 71 (f)) Giving false assurances of respect for another State's sovereignty and territorial integrity (para. 71 (h)) Preparing the official justification for aggression (para. 71 (g)) Urging a third State to attack a victim State after the outbreak of war (para. 71 (i))			
Keitel **(convicted of counts one and two)**		Attending high-level meetings concerning the plans for aggression (para. 72 (d), (f), (g), (h)) Discussing the plans for aggression with the head of State and other high-level officials (para. 72 (e)) Plans for invasion placed under his direct and personal guidance (para. 72 (e)) Initialling and signing plans, directives and memoranda concerning the aggression (para. 72 (b)-(d), (h)) Defence claim: opposed invasion for military reasons and as a violation of a non-	Attending a high-level meeting to obtain concessions from another State by threat of force (para. 72 (b), (c)) Pressuring another State with false rumours, broadcasts and troop manoeuvres (para. 72 (b)) Making military and other arrangements concerning an invasion (para. 72 (b))	Initialling the directive for an attack on another State, signing the order for an attack on another State (para. 72 (c), (f))	Appointing representatives on matters concerning occupied territories (para. 72 (h)) Directing the armed forces to carry out directives for exploiting the occupied territory (para. 72 (h))	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Keitel (continued)		aggression pact (para. 72 (h)) Rejected: he participated in planning and preparing for the invasion (para. 72 (h))				
Rosenberg **(convicted of counts one and two)**		Originating a plan to attack another State, influencing the head of State's decision to attack and playing a major role in planning the attack (para. 73 (d)) Preparing the occupation plans (para. 73 (e))	Playing an important role in preparing an attack (para. 73 (d)) Major responsibility for formulating the occupation policies (para. 73 (e)) Attending a high-level meeting concerning the administration of and policies for occupied territories (para. 73 (e))		Major responsibility for executing the occupation policies, including preparing the draft instructions for setting up the administration of occupied territories (para. 73 (e)) Responsibility for the civil administration of occupied territories (para. 73 (e))	
Raeder **(convicted of counts one and two)**		Attending high-level meetings concerning the plans for aggression (para. 74 (d)) Conceiving the idea to invade another State to obtain advantageous naval bases and discussing it with the head of State and high-level officials (para. 74 (f)) Urging the head of State to occupy another State (para. 74 (g)) Urging the head of State to pursue certain priorities in the aggressive plans (para. 74 (h))	Attending high-level meetings concerning the preparation for aggression (para. 74 (d)) Receiving directives concerning the preparation for aggression (para. 74 (e)) Responsible for rearmament in violation of a treaty (claimed that the violations were minor) (para. 74 (c))		Giving permission to attack another State's submarines before an invasion (claimed initially opposed invasion for strategic reasons and gave permission to attack in response to surveillance activities) (para. 74 (i))	
Jodl **(convicted of counts one and two)**		Attending high-level meetings concerning the plans for aggression (para. 76 (g))	Giving instructions and initialling directives to prepare for an attack (para. 76 (h))	Initialling orders to invade another State (not charged as aggressive war) (para. 76 (c))	Initialling orders to delay an attack (because of weather conditions) and to intervene in another State (para. 76 (f), (g))	

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Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Jodl (continued)		Discussing the plan to invade another State with the head of State and other high-level officials (claimed the invasion was necessary to forestall a third State) (para. 76 (e)) Actively planning an attack against another State (para. 76 (d), (g))	Maintaining military pressure on another State by simulating military measures (para. 76 (c)) Initialling directives to prepare for aggression and issuing instructions to prepare for aggression (not charged as aggressive war) (para. 76 (c))		Taking up a command post after the invasion of a State (not charged as aggressive war) (para. 76 (d))	
von Neurath **(convicted of counts one and two)**		Playing an important part in the head of State's decision to reoccupy territory (para. 79 (d)) (re-entering demilitarized zone, para. 22)	Advising head of State concerning withdrawal from international organizations dedicated to disarmament and peaceful settlement of disputes (Disarmament Conference and League of Nations), instituting rearmament, the universal military service law and the secret defence law (para. 79 (b)) Giving false assurances to a third State that the occupation of another State was not the result of an ultimatum (para. 79 (e)) Giving false assurances to a State to abide by a convention for the peaceful settlement of disputes (para. 79 (f)) Participating in the final negotiations preceding an agreement requiring another State to cede part of its territory (claimed he urged the head of State to reach a peaceful settlement) (para. 79 (g))	Being in charge of Foreign Office when another State is occupied (para. 79 (e))		

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Frick **(acquitted of count one and convicted of count two)**		Devising an administrative organization for wartime (put into operation after the State adopted a policy of war) (para. 82 (f))	Responsible for bringing the State under the complete control of the political party with aggressive aims by drafting, signing and administering various laws (para. 82 (c), (d))		Responsible for war administration (except military and economic) if the head of State proclaimed a state of defence (para. 82 (e)) Responsible for incorporating and administering occupied territories (para. 82 (g)-(j))	Acquitted: activities limited to domestic administration within the State before the first act of aggression, not a member of the common plan or conspiracy to wage aggressive war (para. 81)
Funk **(acquitted of count one and convicted of count two)**		Preparing plans for financing the war (para. 84 (c))	Participating in the economic preparation for aggressive war, including controlling wage and price conditions, strengthening the national bank, transferring foreign exchange reserves into gold and printing occupation currency before an attack (paras. 83 and 84 (c)-(e))			Acquitted: he became active in the economic field after the plans to wage aggressive war had been clearly defined (para. 83)
Dönitz **(acquitted of count one and convicted of count two)**					Actively participating in waging aggressive war responsible for submarine warfare which caused extensive damage, gave operational orders for the supporting submarines in the invasion of another State (paras. 86 and 87) As head of State, ordering the armed forces to continue the war until capitulation (claimed that this was to ensure the evacuation of nationals from occupied territories and the orderly retreat of the armed forces) (para. 86 (g))	Acquitted: he was not privy to the conspiracy (para. 85)

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Seyss-Inquart **(acquitted of count one and convicted of count two)**			Participating in the final stages of intrigue preceding the invasion of another State (not charged as aggressive war) (para. 89 (b)) Inducing part of another State to declare independence in accordance with the offensive against the independence of that State (para. 89 (d))		Responsible for governing territory occupied by aggressive wars the administration of which was vitally important to waging aggressive war (para. 89 (e))	
Schacht **(acquitted of counts one and two)**		Active in organizing the economy for war, including detailed planning for industrial mobilization and coordination of the army and industry in the event of war (para. 90 (c)) Acquitted: not involved in planning any specific war of aggression (para. 97)	Playing an important role in the vigorous rearmament programme and taking steps that were responsible for the rapid rise of the State as a military power, using the national bank to finance the rearmament, and starting a stockpiling scheme for raw material shortages and foreign exchange controls to ensure foreign acquisition of rearmament materials (paras. 90 (c)-(e), 93) Setting the foreign exchange rate and arranging for currency conversion before the occupation of another State (not charged as aggressive war) (para. 90 (g))		Arranging for the incorporation of national or local banks of occupied States (para. 90 (g))	Defence claim: participated in rearmament programme to build a strong and independent State which would carry out a foreign policy on an equal basis with other States (para. 94) Acquitted: rearmament must be carried out as part of the aggressive plans (para. 93) Acquitted: limited participation in the occupation of another State (not charged as aggressive war) did not amount to participation in the common plan (para. 96)
Sauckel **(acquitted of counts one and two)**		Acquitted: not sufficiently involved in planning the aggressive wars (para. 98)			Acquitted: not sufficiently involved in waging the aggressive wars (para. 98)	Acquitted: not sufficiently connected with the common plan to wage aggressive war (para. 98)

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
von Papen **(acquitted of counts one and two)**		Acquitted: did not participate in plans to occupy another State by aggressive war if necessary, did not participate in planning aggressive wars (para. 101) Defence claim: publicly denounced aggressive policies at an early stage, was subsequently arrested and his associates murdered, advised head of State against aggressive means, offer to resign rejected, subsequently retired (paras. 99 (d), (i), 100 (a)-(e)) Acquitted: not in favour of aggressive plans, urged head of State not to pursue them (para. 101)	Actively trying to strengthen the opposition party in another State to achieve its annexation (para. 99 (e), (g)-(i)) Advising foreign head of State to concede to demands backed by threat of invasion (para. 99 (j))			Acquitted: not a party to the plans to occupy another State as a step towards further aggressive action; not a party to the common plan (para. 101)
Speer **(acquitted of counts one and two)**		Acquitted: activities did not amount to planning wars of aggression (para. 103)	Acquitted: became head of the armament industry after the wars had begun; activities did not amount to preparing wars of aggression (para. 103)	Acquitted: activities did not amount to initiating wars of aggression (para. 103)	Activities in charge of armament production aided the war effort in the same way as other productive enterprises aided the waging of war (para. 103) Acquitted: activities did not involve waging aggressive war (para. 103)	Acquitted: activities did not amount to conspiring to plan, prepare or initiate aggressive war; activities did not involve engaging in the common plan to wage aggressive war (para. 103)
Kaltenbrunner **(acquitted of count one and not charged with count two)**		No connection with plans to wage aggressive war (para. 105)	Leader of a paramilitary group in another State, active in intrigue against the Government before the invasion (para. 104 (a)) Acquitted: invasion not charged as aggressive war (para. 105)		Commanding the paramilitary group ordered to seize control of the Government at the time of the invasion (para. 104 (b)) Acquitted: invasion not charged as aggressive war (para. 105)	Acquitted: no direct participation in any plan to wage aggressive war (para. 105)

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Frank **(acquitted of count one and not charged with count two)**						Acquitted: not sufficiently connected with the common plan to wage aggressive war (para. 108)
Streicher **(acquitted of count one and not charged with count two)**						Acquitted: not connected with the conspiracy or common plan to wage aggressive war (para. 110)
von Schirach **(acquitted of count one and not charged with count two)**			Using violent means to gain control of youth organizations, subjecting youth to intensive propaganda and pre-military training, providing replacements for paramilitary group (para. 111 (b), (c))			Acquitted: not involved in developing the plan for territorial expansion by means of aggressive war; did not participate in planning or preparing for aggressive war (para. 112)
Fritzsche **(acquitted of count one and not charged with count two)**						Giving daily press briefings to deliver the directives of the Propaganda Ministry, participating in propaganda campaigns preceding major acts of aggression, formulating and issuing daily radio instructions to all propaganda offices, and briefly serving in a propaganda company on the front (para. 113 (c)-(e), (g)) Acquitted: activities did not fall within the definition of the common plan to wage aggressive war (para. 115)
Bormann **(acquitted of count one and not charged with count two)**			Playing an active role in the rise and consolidation of power of the political party with aggressive aims (para. 116)			

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Control Council Law No. 10		Planning (para. 122)	Preparation (para. 122)	Initiation of invasion or war (para. 122)	Waging (para. 122)	Participation in a common plan or conspiracy to accomplish any of the foregoing (para. 122)
***I.G. Farben* case (all 23 defendants acquitted of counts one and five)**	Reasonable standard to measure the degree of participation necessary to constitute the crime of waging war (para. 135) Nuremberg Tribunal — high standard: persons who lead their country into war, persons who participate as leaders not followers (para. 135) Conclusive evidence of active participation, taking action to carry out the aggressive plan (para. 129) Need to consider a person's activities in positions with the State and with or on behalf of the company (para. 130) Acquitted: participation as followers not as leaders; no participation in planning or knowing participation in the preparation, initiation or waging of a war of aggression or invasion of another State (paras. 137, 141)		With knowledge of the plan, a person furthers its purpose and objective by participating in the preparation for aggressive war (para. 130) Rearmament is not a crime unless it is carried out, or participated in, with knowledge that it was part of a plan or was intended to be used in waging aggressive war (para. 131) Industrialists supported the Government during the rearmament period (para. 135) Participation in the rearmament of the State by contributing to its economic strength and the production of certain basic materials of great importance in waging war (para. 139)		A person whose participation aids the war effort in the same way that other productive enterprises aid in waging war is not guilty of a crime against peace (para. 138) Industrialists continued to serve the Government in waging war (para. 135) The majority of the population of the State supported waging the war to some degree; they contributed to the State's power to resist as well as to attack (para. 135)	Party to the plan or conspiracy (para. 130) Acquitted: none of the defendants was a party to the common plan or conspiracy (para. 141)
***Krupp* case (charges dismissed based on insufficient evidence)**			Rearmament is not criminal unless it is carried out as part of the plan to wage aggressive war (para. 147)		Acquitted: activities did not constitute waging aggressive war (para. 147)	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
***High Command* case (all 14 defendants acquitted of count one; count four was struck without further consideration)**	The use of war as an instrument of national policy is the crime. A person who participates at the policy-making level in planning, preparing or initiating the war or in continuing or extending the war after it is initiated and being waged commits this crime (para. 164) A person becomes criminally responsible if he furthers the policy that initiates or continues an aggressive war (para. 156) A person who comes into possession of knowledge that the invasion and war to be waged are aggressive and unlawful after the policy to initiate and wage aggressive war has been formulated is criminally responsible if he, being on the policy level, could have influenced such policy and failed to do so (para. 157) The war activities of a member of the armed forces do not fall under the definition of crimes against peace if the person does not participate in preparing, planning, initiating or waging aggressive war on a policy level (para. 161)			The initiation of a war or an invasion is a unilateral operation. The initiation of the war ends and the waging of the war between the two adversaries begins when war is formally declared or the first shot is fired (para. 152)		

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
***High Command* case** (continued)	A person who, due to his actual power to shape and influence the policy of the State, prepares for or leads the State into or in an aggressive war is criminally responsible (para. 163) Anyone who is on the policy level and participates in the war policy is liable to punishment (para. 163) A person below the policy level who acts as the instrument of the policy makers in the execution of the war policy is not responsible (para. 163) A soldier or officer below the policy level is under the rigid discipline necessary for and peculiar to military organization and is the policy maker's instrument (para. 163)					
***Ministries* case (five defendants convicted (two acquitted on review) and nine defendants acquitted of crimes against peace)**	Persons who plan, prepare, initiate and wage aggressive wars and invasions and those who knowingly, consciously and responsibly participate therein violate international law and may be tried, convicted and punished for their acts (para. 169) Conscious participation in planning, preparing, initiating or carrying on aggressive war (para. 198)					

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
***von Weizsäcker* (acquitted of the invasion of Austria and the aggression against Czechoslovakia (initially convicted of invasion and forcible incorporation of Bohemia and Moravia), Poland, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Greece and Yugoslavia, Russia and the United States)**	Annexation of the Sudentenland by the Munich Pact acquitted, did not engage in planning or preparing an aggressive war, which he opposed (para. 205) Invasion and forcible incorporation of Bohemia and Moravia initial conviction — acted affirmatively, did not originate the invasion and his part was not a controlling one, but it was real and a necessary implementation of the programme (para. 207) Conviction reversed guilty if joined in making or carrying out the planned aggression or knowingly attempted to deceive third States regarding the same, he did not participate in planning, preparing or initiating the invasion, he did not advise that it be done, he did not approve of it and he made no attempt to deceive third States (para. 209) Invasion of Denmark and Norway acquitted, no time or opportunity to take effective measures to prevent the aggression, the Foreign Office played an insignificant role in the aggression, his participation was insignificant (ordered or	Aggressive war against Poland acquitted, he had no part in the plan for the Polish aggression (para. 210)			Signing or initialling documents, having conferences with foreign diplomats, giving directions to subordinates and to diplomatic missions abroad (para. 200)	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
von Weizsäcker (continued)	knew of dispatch of notes by courier) (para. 211) Invasion of Belgium, the Netherlands and Luxembourg: acquitted; he opposed the invasions and advised against them (para. 212) Invasion of Greece: acquitted, he did not plan, prepare for or initiate the war or take any substantial part in it (para. 213) Invasion of Yugoslavia: acquitted, he had no part in making or implementing the decisions (para. 214) Invasion of Russia: acquitted, he did not take any affirmative action towards initiating, planning or preparing for the aggression; he argued against it; there was no effective action he could have taken to prevent it (para. 215) Aggression against the United States: acquitted, he did not favour or recommend the aggressive war against the United States; the decision to declare war was not made by him or on his advice (para. 216)					

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
***Keppler* (convicted of the aggression against Austria (upheld on review) and Czechoslovakia (upheld on review))**	Played an important part in the unlawful invasion, clear connection with the aggression (paras. 218-219) Played an important part in the separation of Slovakia from Czechoslovakia which was an important and integral part of the aggressive plan, he willingly participated in the plan for aggression (para. 220)				Engaged in carrying out the plans for the invasion, delivered an ultimatum to the head of State (paras. 217 (e), 219) Played an important part in carrying out the plans for the dissolution of Czecholosvakia (para. 221)	
***Woermann* (acquitted of all charges of aggression (initially convicted of aggression against Poland))**	Active participation in carrying out the criminal plans and policies (para. 222) Test: substantial cooperation or implementation of the aggressive plans and acts, guilt based on any action, no matter how slight, which in any way might further the execution of a plan for aggression is too strict a test for practical purposes and contrary to the principle *de minimus* (para. 225) Aggression against Czechoslovakia acquitted, he did not play a significant role, take affirmative action or contribute to the plan or execution thereof (para. 226) Aggression against Belgium, the Netherlands and Luxembourg: acquitted.		Initial conviction participated in the diplomatic preparation for aggression against Poland, responsible for deciding measures to be taken by the High Command of the Armed Forces after the invasion (e.g., news blackout, closing frontier), requested a third State to make its army and territory available to the invading armed forces in the war, which constituted a decisive and affirmative step with respect to the aggression (paras. 224-225) Subsequently acquitted he was not in a position to prevent the invasion, his participation did not involve any affirmative collaboration and he merely passed on information and directives prepared by others (para. 225)		Initial conviction participated in executing the aggression against Poland (para. 224)	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Woermann (continued)	he did not take part in initiating or assist in formulating the plans or take any affirmative action for consummating the plans (para. 228) Aggression against Greece: acquitted; acts in connection therewith did not constitute participation rendering criminal liability (para. 229) Aggression against Yugoslavia: acquitted; he did not initiate or implement the plans for aggression (para. 230) Aggression against Russia: acquitted; he did not originate the plans, further or implement them or assist materially in carrying them out (para. 231)					
Lammers **(convicted of aggression against Czechoslovakia, Poland, Norway, the Netherlands, Belgium, Luxembourg and Russia (upheld on review); acquitted of aggression against Austria, Denmark)**	Contributed to furthering and implementing the aggressions (para. 232) Aggression against Poland: his participation was far from perfunctory (para. 235) Criminal participant in formulating, implementing and executing the plans and preparations for aggression (para. 239) Actual participation in furthering and carrying	Instrumental in translating the aggressive plans into decrees and ordinances; played an important role in formulating legislation concerning the aggressive plans (para. 232 (c), (h)) Aggression against Austria: acquitted; he did not play an active role in formulating or implementing the plans (para. 233) Aggression against Czechoslovakia: convicted; he	Played an active role in the preparations for war, including playing a significant role in preparing war laws and decrees (para. 232 (g)) Aggression against Norway: he participated in preparing for the invasion; criminal participation in the preparations leading up to the invasion (para. 236) Belgium, the Netherlands, and Luxembourg: criminal participation in the		Aggression against Czechoslovakia: convicted; he participated in formulating and carrying out the policies after the invasion (para. 234) Aggression against Norway: criminal participation in the administration of the occupied country (para. 236) Denmark: he did not participate in the invasion and subsequent	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Lammers (continued)	out the plans (para 240)	participated in the plans for the invasion (para 234) Aggression against Norway: he was closely connected to and participated in planning the invasion and occupation (para. 236) Belgium, the Netherlands and Luxembourg: criminal participant in the plans for the invasion and aggression (para. 237) Russia: actively participated in planning the aggression (para 238)	preparations for the invasion and aggression (para. 237) Russia: involved in preparing for the occupation (para. 238)		administration (para. 236) Belgium, the Netherlands, and Luxembourg: criminal participation in the administration of the countries after the invasion (para. 237) Russia: active participation in carrying out the aggression (para. 238)	
Koerner **(convicted of aggression against Russia (upheld on review))**		Russia: participated in planning the aggression (para. 248)	Russia: participation in preparing for the aggression (para. 248)		Austria: he was instrumental in accelerating the production of war munitions immediately after the invasion (para. 245) Russia: participated in executing the aggression (para. 248)	
Ritter **(acquitted)**		Did not take part in the plans of aggression (para. 251)			Undoubtedly contributed to waging the wars (para. 251)	
Vessenmayer **(acquitted)**						
Stuckart **(acquitted)**	He did not plan, prepare, initiate or wage these wars (para. 253)					
Darré **(acquitted)**						
Dietrich **(acquitted)**						
Berger **(acquitted)**					Vigorous participation in waging wars (para 256)	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
***Schellenberg* (acquitted)**	He did not take part in planning, preparing or initiating the wars or, with knowledge of their aggressive character, engage in waging wars (para. 257)					
***Schwerin von Krosigk* (acquitted)**	He did not take part in the plans, initiating or waging aggressive war, his activities were wholly in the economic and industrial field; rearmament itself is no offence against international law (para. 259)				Many of his activities and those of his department dealt with waging war (para. 258)	
***Pleiger* (acquitted)**						
***Roechling* case (initial conviction, reversed on appeal)**	Initial conviction: his action and personal initiative resulted in enslaving the steel industry in occupied countries to increase the war potential of the Reich and increasing the iron and steel production of the Reich and all occupied countries for the purpose of waging aggressive wars, and he advised the Government concerning deporting inhabitants of occupied countries for forced labour or to fight against their own country (para. 261) Reversed on appeal: guilt or innocence depends on whether his activity constituted a sufficient and, in particular, intentional collaboration in preparing and waging a war of aggression; he					

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Roechling case (continued)	participated in the war effort, but did not play a leading part and he did not take over the direction of the iron industry until after the outbreak of the wars, he supported the war efforts to a considerable extent, but he did not participate in any way in waging war (paras 262, 265)					
Tokyo Charter		Planning (para. 268)	Preparation (para. 268)	Initiation (para. 268)	Waging (para. 268)	Participation in a common plan or conspiracy to accomplish any of the foregoing (para. 268)
Tokyo Judgement				Initiating aggressive war means commencing the hostilities; it involves the actual waging of aggressive war, no reason to register convictions for initiating and waging aggressive war (para 291)	After a war has been initiated or commenced by some offenders, others may participate in waging the war (para 291)	Concrete common plan (para. 297) Far-reaching plans for waging wars of aggression and prolonged and intricate preparation for and waging of these wars were not the work of one man, many leaders acted in pursuance of a common plan for the achievement of a common criminal object to secure the State's domination by preparing and waging wars of aggression, all those who at any time were parties to the criminal conspiracy or with guilty knowledge played a part in its execution are guilty (para. 303)

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Araki, Sadao **(convicted of counts 1 and 27; acquitted of counts 29, 31, 32, 35 and 36)**	Acquitted of waging aggressive wars under several counts because he did not take an active part in those wars (para. 326)		Advanced the Army policy to prepare for wars of aggression by stimulating a warlike spirit, mobilizing Japan's material resources for war, giving speeches and controlling the press to incite and prepare the Japanese people for war (para. 325 (c))		Actively supported the Army's polices in China to separate territory politically from China, to create a Japanese-controlled government and to place its economy under Japanese domination (para. 325 (e)) Played a prominent part in carrying out the military and political policies in China (para. 325 (f)) Supported the successive military steps taken for the occupation of China (para. 325 (g)) Collaborated in military operations in China (para. 325 (h))	One of the leaders of the conspiracy (para. 325)
Dohihara, Kenji **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**	Acquitted of waging aggressive war against France because he was not a party to the decision to wage this war and he did not take part in waging it (para. 328)	Acted in close association with other leaders of the military faction in developing the plans to bring East Asia and South-East Asia under Japanese domination (para. 327 (d))	Acted in close association with other leaders of the military faction in preparing the plans to bring East Asia and South-East Asia under Japanese domination (para. 327 (d))	Intimately involved in initiating the aggressive war against China (para. 327 (b))	Intimately involved in developing the war of aggression waged against China in Manchuria and establishing the Japanese-dominated state of Manchukuo (para. 327 (b)) Acted in close association with other leaders of the military faction in executing the plans to bring East Asia and South-East Asia under Japanese domination (para. 327 (d))	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Dohihara, Kenji (continued)					Took part in waging aggressive war against various countries, except France, including serving as Lieutenant General on the General Staff with overhead control of fighting and commanding elements of the Army (para 327 (e))	
Hashimoto, Kingoro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**	Acquitted of some counts because he was not directly connected with the crimes (para 330)		Advocated the use of force to accomplish the aims of the conspiracy, played a principal role in suppressing democratic opposition and gaining control of the Government to accomplish the aggressive schemes and claimed credit for Japan leaving the League of Nations (para 329 (c)-(e), (j))		Played some part in planning the incident which served as a pretext for the Army seizing Manchuria, did everything in his power to secure the success of the aggressive war against China, served as a military commander in the field, claimed credit for seizing Manchuria (para 329 (g)-(j))	He was a principal in forming the conspiracy and contributed largely to its execution, he joined the conspiracy at an early stage, he used all means in his power to achieve its objectives, he participated as a propagandist in the execution of the conspiracy and he conspired to bring about the war of aggression against China (para 329 (b), (f), (h))
Hata, Shunroku **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**	Acquitted of some counts because he did not participate in waging those aggressive wars (para 332)	Contributed substantially to formulating the aggressive plans (para 331 (b))			Contributed substantially to executing the aggressive plans, took concrete measures to achieve Japanese domination of East Asia and areas to the south, waged aggressive war against China and the Western Powers (para 331 (b)-(e))	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Hiranuma, Kiichiro **(convicted of counts 1, 27, 29, 31, 32 and 36; acquitted of counts 33 and 35)**	He was acquitted of some counts because he was not directly connected with the crimes (para. 334)				Supported measures to carry out the aggressive plans, supported the policy of Japanese domination of East Asia and the South Seas by force when necessary, waged war against China, the United States, the British Commonwealth, the Netherlands and the Soviet Union (para. 333 (c), (e), (f))	Joined the conspiracy at an early stage and was a leader of the conspiracy and an active participant in furthering its policy (para. 333 (b), (e))
Hirota, Koki **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33 and 35)**	Acquitted of some counts because he opposed initiating hostilities against the Western Powers, he held no public office after 1938, he played no part in directing the wars and he did not participate in or support the military operations (paras. 337, 338)	Played a role as originator and supporter of the aggressive plans (para. 335 (b))	Supported the plan and legislation for mobilizing manpower, industrial potential and natural resources which provided the basis for preparing to continue the war with China and wage further aggressive wars (para. 335 (h))		Supported the military operations in China (para. 335 (f))	
Hoshino, Naoki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 35)**	Acquitted of some counts because he did not participate in the relevant wars (para. 340)		Was the leader in the special steps taken to equip Japan for continuing the aggressive war in China and for the other contemplated wars of aggression, was involved in preparing for aggressive war (para. 339 (d), (f))		Cooperated closely with the Commander of the Kwantung Army, the virtual ruler of Manchukuo, profoundly influenced the economy of Manchukuo towards Japanese domination of its commercial and industrial development, was in effect a functionary of that Army whose economic policy was to make the resources of Manchukuo serve the warlike purposes of Japan (para. 339 (b))	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Itagaki, Seishiro **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**			Helped engineer the incident that served as the pretext for military action and suppressed attempts to prevent that action, was responsible for expanding Japan's armaments (para. 341 (a), (g))		Took an active and important part in waging aggressive wars, authorized and directed military action; played a principal part and was active in setting up puppet regimes, supported extending Japan's military occupation to threaten the Soviet Union, took part as a Divisional Commander in the fighting in China, intensified and extended the attacks on China, took part in exploiting occupied China, was responsible for prosecuting the war in China, commanded the Army with headquarters in Singapore and his subordinate armies defended other areas (para. 341 (a)-(d), (f), (g), (k))	Conspired to wage aggressive war, joined the conspiracy to seize Manchuria by force and encouraged agitation to support this aim (para. 341 (a))
Kaya, Okinori **(convicted of counts 1, 27, 29, 31 and 32)**			Actively engaged in preparing for aggressive wars and took part in the financial, economic and industrial preparation of Japan to execute the aggressive policies (para. 343 (b), (c))		Actively engaged in carrying out aggressive wars and played a principal part in waging aggressive wars (para. 343 (d), (e))	Was an active member of the conspiracy (para. 343)
Kido, Koichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33, 35 and 36)**			Developed a strong, warlike spirit in Japan and was active in establishing a totalitarian regime in Japan and removing political resistance to the aggressive plans (para. 344 (e), (f))		Was zealous in pursuing the war in China and used his position to support the war with the Western Powers or purposely refrained from taking action to prevent it (para. 344 (d), (k))	

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Kimura, Heitaro **(convicted of counts 1, 27, 29, 31 and 32)**					Played a prominent part in conducting the aggressive wars in China and the Pacific and commanded the Burma Area Army (para. 346 (e), (f))	Was a valuable collaborator or accomplice in the conspiracy to wage aggressive wars (para. 346)
Koiso, Kuniaki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**	Acquitted of some counts because he did not play any part in the hostilities by organizing or directing them (para. 349)	Advocated the plan for Japan to advance in all directions, played a leading role in developing the plans for expansion and prepared or concurred in proposals and plans for the political and economic organization of Manchukuo (para. 347 (b), (c))			Supported and took part in directing the war in China, the beginning of the occupation of French Indo-China and the negotiations to obtain concessions from and eventually dominate the Netherlands East Indies and urged and directed the war against the Western Powers (para. 347 (d), (e))	Joined the conspiracy by participating in the attempt to overthrow the Government and replace it with one favourable to occupying Manchuria (para. 347 (a))
Matsui, Iwane **(acquitted of counts 1, 27, 29, 31, 32, 35 and 36)**					His military service in China cannot be regarded as waging aggressive war because of insufficient evidence of knowledge of the criminal character of the war (para. 350)	
Minami, Jiro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**	Failed to take adequate steps to prevent the incident used as a pretext for military action, to restrain the Army as the area of operations expanded, to stop the occupation of Manchuria under a military administration, to control the Army (para. 351 (c), (d), (f), (g))	Partly responsible for planning the attack on the Soviet Union (para. 351 (h))	Advocated withdrawal from the League of Nations and was partly responsible for developing Manchuria as a base for attacking the Soviet Union (para. 351 (e), (h))		Completed the conquest of Manchuria, aided in exploiting it for the benefit of Japan, was responsible for setting up puppet governments under threat of military action and supported the war in China and the destruction of the National Government (para. 351 (h), (i))	Joined the conspirators in advocating militarism and the expansion of Japan (para. 351 (b))
Muto, Akira **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 36)**	Acquitted of some counts because he took no part in waging those wars (para. 354)	A principal in planning wars of aggression (para. 353 (b))	Was a principal in preparing for wars of aggression (para. 353 (b))		Was a principal in waging wars of aggression (para. 353 (b))	Joined the conspiracy and was a principal in the activities of the conspirators (para. 353 (a) and (b))

Source	*Participation*	*Planning*	*Preparation*	*Initiation*	*Waging*	*Participation in a common plan or conspiracy*
Oka, Takasumi **(convicted of counts 1, 27, 29, 31 and 32)**		Participated in forming the policy to wage aggressive war against China and the Western Powers (para. 355 (d))			Participated in executing the policy to wage aggressive war against China and the Western Powers (para. 355 (d))	Was an active member of the conspiracy (para. 355 (b))
Oshima, Hiroshi **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**	Acquitted: he did not take part in directing those wars (para. 358)	Exerted his full efforts to advance the plans of the Japanese military (para. 356 (b))			Took steps to further and support the aggressive policies (para. 356 (b)-(e))	Was a principal conspirator and consistently supported and promoted the aims of the conspiracy (para. 356)
Sato, Kenryo **(convicted of counts 1, 27, 29, 31 and 32)**					Waged wars of aggression (para. 359 (e))	
Shigemitsu, Mamoru **(convicted of counts 27, 29 and 31 to 33; acquitted of counts 1 and 35)**	Acquitted of count 1 because he did not play a part in policy-making, he never exceeded functions proper to his offices, he repeatedly advised against the conspirators' policies and he was not involved in formulating or developing the policy to wage wars of aggression (para. 362)				Although he often advised against the conspirators' policies, he played a principal part in waging the Pacific War (para. 361 (c))	
Shimada, Shigetaro **(convicted of counts 1, 27, 29, 31 and 32)**		Took part in all decisions of the conspirators in planning the attack against the Western Powers (para. 364 (c))		Took part in all decisions of the conspirators in launching the attack against the Western Powers (para. 364 (c))	Played a principal part in waging war against the Western Powers (para. 364 (d))	
Shiratori, Toshio **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**	Was acquitted of some counts because he never occupied a position that would justify finding that he had waged any war of aggression (para. 368)		Advocated withdrawing from the League of Nations, a totalitarian Government for Japan and an expansionist policy; supported the conspirators in negotiations concerning military alliances; his propaganda advocated the objects of the conspirators (para. 366 (c), (g), (i)-(k))		Justified Japan's seizure of Manchuria to the world press and supported setting up a puppet government in Manchuria (para. 366 (a), (d))	

Source	Participation	Planning	Preparation	Initiation	Waging	Participation in a common plan or conspiracy
Suzuki, Teiichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**			Supported the formation of a government that would support the conspirators' scheme against China and assisted in preparing to wage aggressive war against the Soviet Union (para. 369 (b), (c))	Attended the conferences leading to initiating aggressive wars and actively supported the conspiracy (para. 369 (g))	Attended the conferences leading to waging aggressive wars and actively supported the conspiracy and actively furthered exploiting occupied China (para. 369 (d), (g))	
Togo, Shigenori **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**		Participated in planning the Pacific War (para. 371 (b))	Participated in preparing for the Pacific War and played a leading role in the duplicitous negotiations with the United States (para. 371 (b), (d))		Collaborated with other Cabinet members in waging the Pacific War and the war in China (para. 371 (e))	
Tojo, Hideki **(convicted of counts 1, 27, 29 and 31 to 33; acquitted of count 36)**		Planned the attack on the Soviet Union and participated as a principal in planning aggressive wars (para. 374 (b), (f))	Prepared for the attack on the Soviet Union, helped organize Manchuria as a base for the attack on the Soviet Union and he played an important part in mobilizing the Japanese people and economy for war (para. 374 (b), (d))		Participated as a principal in waging aggressive wars, supported the policy of conquering China, developing its resources for Japan's benefit and retaining troops there to safeguard the results of the war (para. 374 (f), (h))	Advocated and furthered the aims of the conspiracy and participated as a principal in the successive steps of the conspirators in planning and waging aggressive war (para. 374 (f))
Umezu, Yoshijiro **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**		Approved the plans of the conspirators to carry on the war in China and contributed to formulating the aggressive plans of the conspirators (para. 377 (d), (e))	Contributed to preparing to execute the aggressive plans of the conspirators (para. 377 (e))		Played a principal part in waging war against China and the Western Powers, as commander of troops, he continued Japanese aggression in China, set up a pro-Japanese local government and compelled China to agree to limit the power of its legitimate government under threat of force, he directed the economy of Manchukuo to serve Japan (para. 377 (b), (g), (h))	

Table 9
Individual criminal responsibility: Defence claims

Note: The constituent instruments of the tribunals rejected superior orders and official position as valid defences to crimes against peace. The tribunals confirmed the invalidity of these defences in response to claims raised by defendants. The tribunal in the Ministries case rejected the defence claim of coercion or duress based on the facts of the case. The tribunals also considered other defence claims relating to the specific facts of particular cases indicated below.

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Nuremberg Charter	Not a valid defence (art. 8)[a]	Not a valid defence (art. 7)[b]		
Nuremberg Judgement				
Göring **(convicted of counts one and two)**				
Hess **(convicted of counts one and two)**				Defence claim: desire for peace, delivered peace proposal (paras. 69-70) Rejected: knew of aggressive aims and willingness to use force to achieve them, supported the aggression (paras. 69-70)
von Ribbentrop **(convicted of counts one and two)**				
Keitel **(convicted of counts one and two)**				
Rosenberg **(convicted of counts one and two)**				
Raeder **(convicted of counts one and two)**				
Jodl **(convicted of counts one and two)**	Defence claim: a soldier is sworn to obedience and must obey orders; nonetheless he obstructed certain measures by delay (e.g., issuing directive to lynch Allied fliers) (para. 77) Rejected: he was the actual planner of the war and largely			

[a] Article 8 of the Nuremberg Charter stated as follows: "The fact that the defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

[b] Article 7 of the Nuremberg Charter stated as follows: "The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment."

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Jodl (continued)	responsible for the strategy and conduct of operations (para. 78) (see also Nuremberg Charter, above)			
von Neurath **(convicted of counts one and two)**				
Frick **(acquitted of count one and convicted of count two)**				
Funk **(acquitted of count one and convicted of count two)**				
Dönitz **(acquitted of count one and convicted of count two)**				
Seyss-Inquart **(acquitted of count one and convicted of count two)**				
Schacht **(acquitted of counts one and two)**				Defence claim: opposed, advocated limiting, attempted to limit and urged the head of State to limit the rearmament for financial reasons; resigned from some positions after being accused by the head of State of upsetting the aggressive plans by financial means; dismissed by the head of State from remaining positions because of attitude; participated in plans to depose and assassinate the head of State; and was arrested and confined to a concentration camp (para. 92 (b), (c), (e)-(h), 94, 95 and 96) Acquitted: if his policies had been adopted, the State would not have been prepared for a general war (para. 95)
Sauckel **(acquitted of counts one and two)**				
von Papen **(acquitted of counts one and two)**				
Speer **(acquitted of counts one and two)**				

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Kaltenbrunner **(acquitted of count one and not charged with count two)**				
Frank **(acquitted of count one and not charged with count two)**				
Streicher **(acquitted of count one and not charged with count two)**				
von Schirach **(acquitted of count one and not charged with count two)**				
Fritzsche **(acquitted of count one and not charged with count two)**				
Bormann **(acquitted of count one and not charged with count two)**				
Control Council Law No. 10	Not a valid defence (art. II, para 4(b))[b]	Not a valid defence (art. II, para 4(a))[a]		
I.G. Farben case **(all 23 defendants acquitted of counts one and five)**				
Krupp case **(charges dismissed based on insufficient evidence)**				
High Command case **(all 14 defendants acquitted of count one; count four was struck without further consideration)**		A person is not relieved of responsibility for criminal action by reason of his military position (para. 160)		
Ministries case **(five defendants convicted (two acquitted on review) and nine defendants acquitted of crimes against peace)**			Defence claim: defendants carried on certain activities because of coercion and duress and therefore they were forced to act as they did and could not resign or otherwise avoid compliance with the criminal programme (para. 199) Rejected: even if they could not have continued to hold office if they did not comply or if their	

[b] Article II, paragraph 4 (b), of Control Council Law No. 10 stated as follows: "The fact that any person acted pursuant to the order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation."

[a] Article II, paragraph 4 (a), of Control Council Law No. 10 stated as follows: "The official position of any person, whether as Head of State or as a responsible official in a Government Department, does not free him from responsibility for a crime or entitle him to mitigation of punishment."

Source	Superior orders	Official position	Coercion and duress	Other
***Ministries* case** (continued)			offers of resignation were not accepted, there were other ways in which they could have been relieved from continuing in their course, none of their superiors would have continued them in office if they had constantly disapproved of or objected to the commission of the criminal programmes and therefore displayed a lack of cooperation (para. 199)	
von Weizsäcker **(acquitted of the invasion of Austria and the aggression against Czechoslovakia (initially convicted of invasion and forcible incorporation of Bohemia and Moravia), Poland, Denmark and Norway, Belgium, the Netherlands and Luxembourg, Greece and Yugoslavia, Russia and the United States)**				Defence claim: although he appeared to collaborate, he never approved of the aggressive programme; he attempted to sabotage it; he was active in the resistance; he actively plotted and planned to remove the head of State and like-minded chiefs of the army when he realized that their foreign policy entailed the danger of war and the use of aggressive wars and invasions as a means to carry out their plans (para. 201) Tribunal: this defence must be regarded with suspicion and accepted with caution only when fully corroborated; a person is presumed to intend the natural consequences of his own deliberate acts, but this presumption fails if the evidence establishes the contrary (para. 202) Tribunal: there is no justification or excuse for crimes against peace which are at the pinnacle of criminality; good intentions do not render innocent that which is criminal; a person may not with impunity commit serious crimes because he hopes to prevent others; general benevolence is no justification for participation in crimes (para. 203) Tribunal: silent disapproval is

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Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
von Weizsäcker (continued)				not a defence to action (para. 207) Tribunal: inner disapproval is not a defence if a person becomes a party to, aids in, abets or takes a consenting part in the aggression (para. 209) Defence claim: while apparently acting affirmatively, he was in fact acting negatively (para. 210) Accepted: criterion is whether he did everything in his power to frustrate a policy which outwardly he appeared to support; he used every means in his power to prevent the catastrophe, he was not the master of the situation, he had no decisive voice, but he did not sit idly by and stolidly follow the dictates of the head of State or the Foreign Minister, he warned third States; his lack of success is not the criterion (para. 210)
Keppler **(convicted of the aggression against Austria (upheld on review) and Czechoslovakia (upheld on review))**				
Woermann **(acquitted of all charges of aggression (initially convicted of aggression against Poland))**				
Lammers **(convicted of aggression against Czechoslovakia, Poland, Norway, the Netherlands, Belgium, Luxembourg and Russia (upheld on review); acquitted of aggression against Austria, Denmark)**				
Koerner **(convicted of aggression against Russia (upheld on review))**				Defence claim: Göring was a man of peace who tried to avoid war (para. 244) Rejected: transparent attempt to conceal his own knowledge and

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Koerner (continued)				motives (paras. 244-247) Defence claim: production of war munitions was for defensive purposes only (para. 245) Rejected: defendant knew of effort to build offensive munitions (para. 245)
Ritter **(acquitted)**				
Vessenmayer **(acquitted)**				
Stuckart **(acquitted)**				
Darré **(acquitted)**				
Dietrich **(acquitted)**				
Berger **(acquitted)**				
Schellenberg **(acquitted)**				
Schwerin von Krosigk **(acquitted)**				
Pleiger **(acquitted)**				
Roechling **case (initial conviction, reversed on appeal)**				
Tokyo Charter	Not a valid defence (art. 6)	Not a valid defence (art. 6)[c]		
Tokyo Judgement				
Araki, Sadao **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33, 35 and 36)**				
Dohihara, Kenji **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**				
Hashimoto, Kingoro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**				

[c] Article 6 of the Tokyo Charter stated as follows: "Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his Government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires."

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Hata, Shunroku **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**				
Hiranuma, Kiichiro **(convicted of counts 1, 27, 29, 31, 32 and 36; acquitted of counts 33 and 35)**				
Hirota, Koki **(convicted of counts 1 and 27; acquitted of counts 29, 31 to 33 and 35)**				Defence claim: he consistently advocated settling disputes through diplomatic channels (para. 336) Rejected: he was never willing to sacrifice any gains made or expected to be made at the expense of Japan's neighbours and consistently agreed to the use of force if negotiations failed (para. 336)
Hoshino, Naoki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 35)**				
Itagaki, Seishiro **(convicted of counts 1, 27, 29, 31, 32, 35 and 36; acquitted of count 33)**				
Kaya, Okinori **(convicted of counts 1, 27, 29, 31 and 32)**				
Kido, Koichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33, 35 and 36)**				
Kimura, Heitaro **(convicted of counts 1, 27, 29, 31 and 32)**				
Koiso, Kuniaki **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**				Defence claim: as Chief of Staff he merely forwarded proposals and plans which did not import his personal approval (para. 348) Rejected: his knowledge of the aggressive plans and his conduct went beyond the scope of the normal duties of a chief of staff in advising on political and economic matters to further those plans (para. 348)

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Matsui, Iwane **(acquitted of counts 1, 27, 29, 31, 32, 35 and 36)**				
Minami, Jiro **(convicted of counts 1 and 27; acquitted of counts 29, 31 and 32)**				
Muto, Akira **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 33 and 36)**				
Oka, Takasumi **(convicted of counts 1, 27, 29, 31 and 32)**				
Oshima, Hiroshi **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**		Defence claim: diplomatic immunity (para. 357) Rejected: diplomatic privilege does not import immunity from legal liability, but only exemption from trial by national courts; this immunity has no relation to crimes against international law (para. 357)		
Sato, Kenryo **(convicted of counts 1, 27, 29, 31 and 32)**				
Shigemitsu, Mamoru **(convicted of counts 27, 29 and 31 to 33; acquitted of counts 1 and 35)**				
Shimada, Shigetaro **(convicted of counts 1, 27, 29, 31 and 32)**				
Shiratori, Toshio **(convicted of count 1; acquitted of counts 27, 29, 31 and 32)**				
Suzuki, Teiichi **(convicted of counts 1, 27, 29, 31 and 32; acquitted of counts 35 and 36)**				
Togo, Shigenori **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**				Defence claim: he made every effort to successfully negotiate with the United States (para. 372) Rejected: when the negotiations failed, he continued in office and supported the war (para. 372)

Source	*Superior orders*	*Official position*	*Coercion and duress*	*Other*
Tojo, Hideki **(convicted of counts 1, 27, 29 and 31 to 33; acquitted of count 36)**				
Umezu, Yoshijiro **(convicted of counts 1, 27, 29, 31 and 32; acquitted of count 36)**				